Docket #0135 Date Filed: 5/18/2026

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

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| IN RE: | ) | BK. NO: 19-34054-SGJ |
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| HIGHLAND CAPITAL | ) | |
| MANAGEMENT, L.P. | ) | |
| D E B T O R. | ) | |

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| HIGHLAND CAPITAL | ) | ADV. NO: 25-03055-BWO |
| MANAGEMENT, L.P. v | ) | |
| PATRICK DAUGHERTY | ) | |

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TRANSCRIPT OF PROCEEDINGS

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BE IT REMEMBERED, that on the 17th day of April, 2026, before the HONORABLE BRAD W. ODELL, United States Bankruptcy Judge at Dallas, Texas, the above styled and numbered cause came on for hearing, and the following constitutes the transcript of such proceedings as hereinafter set forth:

CINDY SUMNER, CSR (214) 802-7196

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P R O C E E D I N G S

THE COURT: Good morning, everyone. Sorry we had a little bit of our own technical issues that we had to get ready. When you come to a new court, you've got to figure it out as a judge, too. Luckily Judge Jernigan keeps paper up here, which we'll start with the old traditional way.

All right. Very good. We will go ahead. We're here on a special setting. We'll go ahead and call the matter which is the matter of Highland Capital Management, L.P. versus Daugherty, case number 25-03055. Let me go ahead and start off with appearances first by the movant's counsel.

MR. MORRIS: Good morning, Your Honor. John Morris, Pachulski Stang Ziehl & Jones. I'm here on behalf of the plaintiff Highland Capital Management. I am joined by Highland's chief executive officer, Jim Seery, Highland's chief operating officer and chief financial officer, David Klos, Highland's general counsel, Tim Cournoyer, and my co-counsel, my local co-counsel, Zach Annable. We're pleased to be here today.

THE COURT: Welcome.

All right. Counsel for the defendant, for the responding party, we'll put it that way.

MR. YORK: Good morning, Your Honor, Drew York from Gray Reed on behalf Patrick Daugherty. With me today is

not just Mr. Daugherty, but also from my firm two of our associates, Drake Rayshell, R-a-y-s-h-e-l-l, and then Reid, R-e-i-d, Burley, B-u-r-l-e-y. We also have our paralegal, Laura DeBerg here for AV. And then we also have T.J. Liles-Tims our expert from Weaver.

THE COURT: Okay. All right.

Let me -- let me start off by seeing, are we -- is there any announcements that need to be made by the parties?

MR. MORRIS: Good morning, Your Honor, John Morris again. A pleasure to be here.

Let me try and set the table as I can and then Mr. York can chime in, if I say anything incorrectly, or if he wants to supplement.

First of all, I want to thank Mr. York and his firm for cooperating in getting us to this point. This is a difficult job under the best of circumstances. And it becomes just a little bit easier when lawyers meet and confer properly, cooperate, and try to resolve issues, evidentiary issues. And we've done all of that. And so I thank him for that.

The way I think we've agreed to proceed today, Highland has no objection to any of Mr. Daugherty's exhibits. We had a bunch of relevance objections, but I think to the extent they are the subject of examinations, we can let the Court make any determination about what weight, if any, to give any particular document. So we're not going to object to any of

Mr. Daugherty's documents. I believe that Mr. Daugherty still has a handful of objections to Highland's documents. I'm prepared to proceed, you know, with my understanding of what those objections are. Once we get those matters out of the way, I think our expectation is that we'll proceed to opening statements, you know, as the plaintiff and the party who at least bears the initial burden we'll go first. Mr. York can make his opening statement. We're going to get right to the testimony after that.

I do -- I did tell Mr. York earlier this morning that Mr. Klos is one of our witnesses. It's a very limited examination relating to the estimate of Mr. Daugherty's claim. He's got a wedding out of town and I'd really love to get him on and off the stand so that he can catch his flight. So it may not thematically or logically fit in the proper order, but I'd really like to do that for Mr. Klos.

THE COURT: Okay. Mr. York.

MR. YORK: Thank you, Your Honor.

First, thank you to you and your staff for traveling to Dallas for this hearing today. And I concur with Mr. Morris that the professionalism between counsel trying to get us to narrow the issues has been very good.

We have a couple of issues with a couple of their exhibits, which I think we can take up. And then I agree, let's move to openings and then straight into the witnesses

so that we can keep this process moving today.

THE COURT: Okay. And so just real quick, Mr. York, so you filed your objections. All of those still are outstanding, or did you all confer and resolve any of those?

MR. YORK: We have conferred a little further, Your Honor. And if I may, my understanding is with respect to Highland's Exhibits 21, 26, and 27, they are not going to offer -- we had objected on hearsay grounds. They're not going to offer them for the truth of the matter asserted; is that correct, Mr. Morris?

MR. MORRIS: Yes, Your Honor.

MR. YORK: And based upon that, we will withdraw objection.

MR. MORRIS: Should I just address the balance?

MR. YORK: Sure. That's fine with me.

MR. MORRIS: Okay. So 29 to 34, Your Honor, are statutes and regulations. They are statutes and regulations relating to the Tax Code that Mr. Klos is relying upon in order to do an arithmetic calculation of the estimate of damages. You know, I don't know that they have to be on an exhibit list. I think the Court can certainly take judicial notice of the law. But they're certainly not hearsay. They're the law.

MR. YORK: So we're going to withdraw the objection to those, Your Honor.

THE COURT: Okay.

MR. MORRIS: The next group is really limited. It's Exhibit 43 to 46. And what those documents are are documents relating to pleadings, judgments, and verdicts from a long time ago litigation between Mr. Daugherty, Highland, and other parties. There is a relevance objection to that. And if I may just quickly explain, Your Honor.

In Mr. Daugherty's second affirmative defense he alleges that Highland had breached his employment agreement. The fact of the matter is, Your Honor, in that earlier lawsuit Mr. Daugherty asserted a breach of contract cause of action. The jury in that case rejected his claim. And so we think that those documents are very important to show that the very defense that he's asserting today has already been rejected.

THE COURT: Okay.

MR. YORK: Your Honor, they're not relevant because if you look at the jury's verdict and the instructions specifically, none of those claims that were asserted were for breach of this specific issue with respect to any claim on the employment agreement. And, Your Honor, I'll go a step further. We actually are going to withdraw the prior material breach defense with respect to the

employment agreement. So I think that resolves that issue.

MR. MORRIS: It may. I want to be perfectly clear, Your Honor. As I think you may have seen in the joint pre-trial order, we set forth our contentions as clearly and concisely as we could instead of filing a pre-trial brief. It was just a matter of convenience. But our first cause of action is that their claim should be disallowed. And we offer three reasons for that.

One of those reasons, the third reason is that the claim should be disallowed because even if the contract was enforceable, even if the Court finds that Highland hadn't fulfilled its duties under the contract -- and we're talking about the tax and reserve claim here -- the third alternative is to why the claim should be disallowed is because under the terms of the employment agreement, it was waived, okay. And we have two -- we have two provisions that we rely on in the employment agreement. One just says that if it's a bonus and you're not at Highland at the time the payment is due, you have forfeited. The second is Section 4.5. Section 4.5 and that provision says that if Mr. Daugherty had signed what is referred to as Exhibit A, he would have gotten a severance. There's no dispute that he didn't sign Exhibit A. But that paragraph goes on to say if you don't sign Exhibit A, then Highland is absolved of all liability. And we're relying on Section 4.5 of the employment agreement to urge the Court to

disallow the claim on the grounds that he failed to provide Exhibit A. And that is exactly what he alleged in the Texas action.

So if you go to -- and so if that's what they're withdrawing, if they're withdrawing any claim that Highland breached the employment agreement by failing to provide Exhibit A, then I'll withdraw the Texas documents.

MR. YORK: Well, let's -- okay, so let's be clear. I'm not withdrawing the argument with respect to Exhibit A. But I can tell you that that issue was not an issue that the jury took up as part of the instructions and questions that they answered in that state court action. So it's irrelevant.

THE COURT: Okay.

MR. YORK: And let me back up. I need to give you some context too.

The exhibits that they intend -- or that they're offering into evidence are the jury's verdict and the final judgment in that case.

MR. MORRIS: That's not exactly right.

THE COURT: Okay. Well, let me -- let me make sure I understand, because I guess maybe I misunderstood.

What we have is outstanding evidentiary objections based on the motion. But it was my understanding we had a lot of hearsay objections. It sounds to me like we're

arguing relevancy at this point.

MR. MORRIS: Correct.

MR. YORK: Correct.

THE COURT: Can we not take up the relevancy issues during trial and if they decide if they want to put on that exhibit, we'll deal with it then as opposed to dealing with relevancy right now?

MR. MORRIS: That's fine.

THE COURT: Okay. So where does that leave us then on all remaining exhibits for Highland?

MR. MORRIS: I think there's only one, which is 47, which is also a relevance exception -- relevance objection.

MR. YORK: I'm fine with that. We'll withdraw 47 objection. There's one more.

MR. MORRIS: I'm sorry, hold on. So the objection is withdrawn to 47. The objection is withdrawn to 29 to 34. We have the limitation of 21, 26, and 27 that it's not being offered for the truth of the matter asserted. And then 43 to 46, the Court will deal with it as it comes.

MR. YORK: There was one more.

MR. MORRIS: Okay.

MR. YORK: Highland's Exhibit 57, which is the transcript of T.J. Liles-Tims. And we're just objecting under Rule 32, Your Honor. He's here to testify live.

Certainly if they believe there's something from his deposition testimony they want to impeach him with, I understand. But if they're offering it somehow affirmatively and the witness is here, let's deal with it with live testimony rather than through his deposition.

MR. MORRIS: Your Honor --

THE COURT: Mr. Morris.

MR. MORRIS: -- I don't want to burden the Court. That's fine.

THE COURT: Okay.

MR. YORK: I'm not sure that's accurate, but I don't want to debate the point.

THE COURT: Okay. So does that then resolve all document objection -- objections to documentary evidence, other than obviously we're reserving 43 through 46?

MR. YORK: Correct. And --

THE COURT: Go ahead, Mr. York.

MR. YORK: So one other housekeeping matter, Your Honor. So on Daugherty's exhibit list we are going to withdraw 58 through 77.

THE COURT: 58 through --

MR. YORK: 77. And I told Mr. Morris about this earlier this morning.

THE COURT: Okay. All right. So do we -- are you all wanting to each move for the admittance of all these

exhibits at this point? Yes?

MR. YORK: Yes.

MR. MORRIS: Yes, Your Honor. I'll put it this way, Highland moves for the admission of all of its exhibits that were filed at Docket Numbers 107 and 128, subject to the outstanding relevance objections to 43 to 46 and subject to the limitations of 21, 26, and 27.

THE COURT: All right. Let me address those first and then, Mr. York, we'll have you go.

So I have an offer for admission into evidence all exhibits that were filed at Docket Number 107 and 128 with the limitation being applied to Exhibits 21 and then 26 and 27. And then dealing with relevancy at the time of testimony for Exhibits 43 through 46.

Do I have any objections?

MR. YORK: No, Your Honor.

THE COURT: Okay. Those will be admitted as stated.

All right, Mr. York.

THE COURT: Daugherty moves to admit, Your Honor, the exhibits on his witness and exhibit list, which is -- excuse me, his second amended witness and exhibit list, Docket Number 105, as well as the supplement, first supplemental that was filed thereto, which is Docket Number 126, with the exceptions of Exhibits 58 through 77.

MR. MORRIS: No objection.

THE COURT: All right. Then those documents will be admitted, as well.

All right. So I think that moves us to opening statements. All right, Mr. Morris.

Actually, one moment before I get started. I just recognized this. We have on the Webex a party appearing, or having a phone number with 313 and ending in 44. Would you please announce who you are?

Again, this is Judge Odell. We have a party with a phone number of Area Code, what appears to be Area Code 313 and then ending in 44. Please announce for the record who you are.

All right. Hearing no response, we're going to exclude that number as this will be an evidentiary hearing.

So you may proceed, Mr. Morris.

MR. MORRIS: Thank you very much.

Good morning, Your Honor, John Morris, Pachulski Stang Ziehl & Jones on behalf of Highland Capital Management.

We filed earlier this morning, pursuant to Your Honor's rules, a demonstrative exhibit that I'm going to use in my opening statement that was filed this morning at approximately 7:00. It's at Docket 128. I've provided hard copies of that to counsel. Would you like -- would Your Honor prefer to have a hard copy?

THE COURT: If you have one available, that would be great.

MR. MORRIS: I do.

THE COURT: Thank you.

MR. MORRIS: Okay. So just moving to the first slide. I'll try to be as quick as I can here, Your Honor. This is a very narrow set of issues, I think, that the Court has to consider. Mr. Daugherty is a former employee and partner of Highland Capital Management. He filed a number of proofs of claim. They got consolidated into what was called Claim 205. You'll hear testimony today that prior to confirmation or on the eve of confirmation we struck a deal with Mr. Daugherty to resolve all but what is now being referred to as the reserved claim. We presented that to Judge Jernigan at confirmation. For reasons that Mr. Seery will testify to, that original agreement never got reduced to a signed writing. Certain events occurred that led the parties to negotiate further and eventually they got to a settlement in November of 2021.

Highland today is asking the Court to do a couple of things. We are asking the Court to disallow the claim in its entirety. That claim has been fully reserved at an amount of $2.6 million since way back in the day. That number was not negotiated. That number was not drawn out of thin air. It is the maximum amount that Mr. Daugherty asserted in his

proof of claim for the reserved claim. And we'll get to that issue shortly. But it's $2.6 million. That's the reserve number. We're looking to disallow that claim. If the claim is not disallowed, we're looking to estimate that claim pursuant to Section 502 of the Bankruptcy Code. Under Section 502, the Court shall estimate the claim if the failure to do so will unduly delay the administration of the case. And we believe that that latter issue of the administration and the delay of the administration of the case is exactly what Judge Jernigan decided last fall and why we're here today. That's why we're here today, because the claim has to be decided before August 11th, 2026, as you'll hear.

We had a cause of action for subordination, Your Honor. We've withdrawn that. It wasn't worth the fight. In addition to, you know, litigating over whether or not the claim should be subordinated, you have the ancillary issue if it was subordinated whether it would go into Class 10 or Class 11. And it just didn't seem to us to be worth it, so we withdrew that to try to speed this up today. And we withdrew it with prejudice. We said that in our joint pre-trial order. And I'll confirm that today.

And then Mr. Daugherty asserted several causes of action, breach of contract for the failure to provide the books and records of -- and specific performance and bad

faith.

If we move to the next slide, Your Honor, I want to just deal with the first cause of action for Highland. We don't think the so-called contract is enforceable because it is vague and has missing terms. We've addressed this very specifically in paragraphs 30 to 39 in the joint pre-trial order. That can be found at Docket 101. So I don't want to repeat everything that's in there. We've highlighted for you on this slide those portions of the statement that we believe are vague and ambiguous. We've identified the reasons why those terms are vague and ambiguous. And I would just ask Your Honor to look at what's in the box.

This is the entirety of the so-called contract that Mr. Daugherty is seeking to enforce. It is three sentences. The first sentence has nothing to do with anything. It says, refund is an estimated amount. Although it's interesting that he's trying to enforce a contract that's based on an estimated amount but he's here to tell you today you can't estimate what the number is, right. But that's what it says. And then the last sentence is kind of irrelevant too. It just says, Hey, you're going to receive the refund in approximately four months. So really the entire so-called contract can be boiled down to a single sentence. And we believe those terms are vague and ambiguous. And obviously that very simple sentence doesn't include any of the concepts

that Mr. Daugherty is trying to introduce here today. It doesn't say anything about indemnity. It doesn't say anything about guaranteeing a particular result. It doesn't say that Highland is going to reimburse him a nickel. It doesn't say that Highland is going to cover. It doesn't refer to an audit. It doesn't refer to penalties or interest. So we believe that the claim should be disallowed because the contra -- this sentence is not enforceable. It's not an enforceable contract.

Even if it was, you will hear testimony that Highland fulfilled its obligations by issuing a (k)(1) that had the losses that Mr. Daugherty could utilize in order to obtain a refund. And they did exactly that. And now we get to the point that we were talking about earlier, the third alternative for disallowance of the claim, even if the Court finds that the contract is enforceable, even if the Court finds that Highland didn't satisfy its obligations, if the tax refund was, in fact, a bonus, Mr. Daugherty forfeited it when he resigned. Why did he do that? Because his employment agreement says that.

In paragraph 3.1(a) we've highlighted the sentence that says the executive must be employed on the payment date in order to be eligible for the bonus. We may dispute a number of things today, Your Honor. One of the things we are not going to dispute is that Mr. Daugherty is not employed by

Highland today and hasn't been for more than a decade. So, you know, from our perspective under 3.1(a) the Court can certainly disallow the claim based on the fact that he is not employed by Highland and whatever payment he may or may not get, whatever right he may be entitled to is going to be in the future and I don't think there's going to be any evidence that he's likely to be rehired by Highland.

And Mr. Daugherty knows this. If you go to the next slide. As he was walking out the door he and Mr. Dondero got into a very heated debate over what Mr. Daugherty was owed. And this is Mr. Daugherty's email that he sent to Mr. Dondero just before he quit, probably moments before he quit. And among the other things he said, For the record, the agreement has always expressly noted that I would have to be employed at Highland in order to get any payment of bonus. And has always been the case. So he knew it then that he had to be employed in order to get a bonus. He's going to tell you today that this tax refund was in lieu of a bonus. He's not employed today at Highland. He doesn't get a bonus. He doesn't get any more money from Highland.

If we move to the next slide, Your Honor. This is like the (b) part of number three, if you follow me. Disallowance because it's vague and ambiguous and is missing key terms. Number two, disallowance because Highland has performed. And then three has (a) and (b) and I just did the (a), 3.1. The

(b) of 3. -- of number three is 4.5. And this is what I referring to earlier. It has this reference and it says, voluntary termination. And there won't be any dispute that Mr. Daugherty voluntarily resigned. And he had a choice to make at that moment in time. He could either sign what was Exhibit A, there's no obligation in this -- in this provision that required Highland to do anything.

You'll see attached to the employment agreement, which is Exhibit 11, you'll see attached to the employment agreement is Exhibit A. All right. And all Mr. Daugherty had to do -- it says, if the executive signs and returns. All he had to do was sign it and send it back to Highland. But he didn't want to do that. Because if he did that, he would have only been entitled to six weeks of severance and he would have had to give Highland a release. So he didn't do it. And that's okay. That was his right. He wasn't obligated. It doesn't make him a bad person because he didn't send Exhibit A back. But that's what -- that's what he was required to do. And it says, if the executive declines to do so, he gets no severance and the company has no further liability or obligation to the executive under this agreement or in connection with his employment or termination. That's it. Don't send it back, it's fine.

But a funny thing happened. And you'll see this -- you'll see this in the evidence. Before Mr. Daugherty walked

out the door and they got engaged in that lawsuit that I told you about earlier, they did try to negotiate some other form of severance package. And you'll see an exhibit where Highland send to Mr. Daugherty a form of severance agreement that has the exact same language that he's now trying to engraft onto the compensation statement, that one sentence of the compensation statement. You'll see the exact same -- so after -- this is 2 1/2 years later. He quits. He doesn't want to sign Exhibit A. No problem. They negotiate. Highland sends him a form of severance agreement. It's an all or nothing deal. No doubt about it. But here's the killer. The killer is that in that very document, it has the very indemnity for tax obligations arising from Highland's tax returns that he's now trying to tell you was somehow in this other one-sentence paragraph. Like why would you do that? Why would you put into an agreement what you thought you already had? Nobody would do that.

Let me move on. So then we get to the second cause of action, which is the next slide. This cause of action asks the Court to do what 502 mandates and that is estimate the claim in the event that the failure to do so will unduly delay the administration of justice. Again, we'll present evidence, but I think it's already law of the case. Judge Jernigan decided this issue last fall when she denied the motion to dismiss and granted the Rule 60 motion. She did it

precisely because this claim had to be completed before August 11th. And why is that the case, Your Honor? You'll hear Mr. Seery testify it's deep, deep, deep, deep in the record in this case on multiple motions. Under the plan and the claim and trust agreement there was a five-year life span for the claim and trust. That was the agreement with the creditors. It was the agreement with the creditors, including Mr. Daugherty. It was going to be a three-year term subject to two one-year extensions upon motion and upon Court approval. And that's exactly what happened.

Just before the end of the third year, we had to make a motion. We had to get approval from the Court to extend the life of the trust one more year. We did it again last June. We were in this courtroom on June 25th. Mr. Daugherty was there. Dugaboy, who you'll hear about more in the coming days, objection to the extension of the life of the trust by one more year. We resolved that objection by saying, we're going to live with the terms of the agreement. And, you know, unless something changes, we have no expectation that we're going to need that. And so Judge Jernigan extended the life of the claim and trust by one more year until August 11th, 2026, the five-year anniversary of the effective date of the plan.

And so that's where we are. And so I think we'll easily be able to meet that second part of 502. I think it

is law of the case. But be that as it may, Mr. Seery will touch on that for a few minutes during his testimony.

So what is the slide that's before you? It's math. It's arithmetic. It's not expert -- there's no expert analysis here. What Mr. Klos is going to testify to is that there are a number of different factors that must be considered in order to estimate Mr. Daugherty's claim. And you'll see the highlighted pieces are fixed numbers. There's not an ounce of subjectivity to them. There is no debate about the amount of Mr. Daugherty's partnership interest or the highest applicable tax rate of 35 percent. I mean, if Mr. Daugherty wants to tell us it should be 34 percent, we'd listen. But there's no subjectivity to that. There's no subjectivity to the interest rate. There's no subjectivity to the time period. And all the Court has to do is determine what is, you know, a fair estimate of the adjustment that the IRS might -- not even that the IRS might make. The IRS has already made its adjustment. What's happening now is a dispute resolution process. The IRS made its determination back in late 2017, 2018. And all that's happening now is you have mediation. You have settlement negotiations. You have an appellate process within the IRS. You might go to tax court. All that's happening now is a dispute resolution mechanism. And so all Mr. Klos is going to tell you -- and by the way, I just want to talk about Mr. Klos for just a

moment.

Mr. Klos is a CPA. He's the CFO. We're not offering him as an expert. But he has a lot of experience with tax returns. He has some experience with audits. This is what he does every day. And, again, there's no subjectivity anywhere on this document and that's the important point the Court -- that I want to emphasize to the Court, not expert opinion. We didn't think that we had to go do that.

You've got five scenarios on the top. The first is that -- let's start from the right side, the fifth scenario. That is $166 million. That's the amount that the IRS determined back in December 2017 was the adjustment that should be made to Highland's 2008 income tax returns. Right. It can't get more than that. That was the determination that was made way back in the day. You will hear testimony that it's never changed.

Moving to the left. What's number four? Number four is a settlement proposal that we -- that we have in the record that we cite to that the IRS made to the tax matter's partner which is, you know, controlled by Jim Dondero. So that $129 million number, that's not subjective. That's not anything we did. We just said, hey, that's a data point. The Court can consider the offer that the IRS made.

What's number three? It's 50/50, right. We're not presenting -- we're not here -- we're not here handicapping

as to the likelihood that anybody is going to succeed or not succeed. But that would be a reasonable estimate, it's 50/50.

What is number two? That is Mr. Dondero's offer. Mr. Dondero offered to settle this at $8 million and Mr. Klos will walk you through that.

And case number one is a complete victory by the tax matter's partner. And, of course, neither Mr. Daugherty nor any of the former limited partners of Highland would owe a nickel.

So, you know, Mr. Klos does this stuff every day. There's not a wit of subjectivity that's brought to it. It's simply arithmetic. I think -- I think their expert is going to agree with most of what I just said. So you'll hear that.

If we move to the next slide, we get to Mr. Daugherty's claim. It's a books and records claim. As part of the settlement, Highland agreed to transfer its interests in two shell companies called HERA and ERA, I think it's Highland Employee Retention Assets, or something like that. There won't be any dispute those entities never had any employees. They never had any operations. They never had -- they never leased office space. They never had a server. They never had anything, right. They had a couple of assets that they held for the benefit of certain individuals. That and nothing more.

It had nothing to do with Mr. Daugherty's claim as filed. But nevertheless, in order to get to yes, Highland agreed to transfer its ownership interest in those two interests -- in those two entities to Mr. Daugherty. And it did so. And we'll show you the transfer documents to show just what it meant by transferring the interests. These were limited liability companies, so there's no shareholders. There's no common stock. They're limited liability companies. And the ownership of a limited liability company, you'll hear Mr. Seery testify, is reflected in membership interests. And that's what Highland agreed to transfer. And that's what Highland did transfer.

But what do we have? We have the sentence under -- above the red. And we have one sentence before. That's the entirety of the agreement on the reserve claim. And this is one sentence above the red that's the entirety of the three causes of action that Mr. Daugherty is asserting. And what does it say? I think we all believe that it's plain and unambiguous. It says, such transfer will include the HERA and ERA books and records (spreadsheet maintained on Highland's system). That's it. That's all it says.

I mean, there's some other, we believe, relevant information that we've highlighted in yellow. We say that it's clear that the transfer will be without any liability or material cost to Highland. You know, we'll give you the

books and records of HERA and ERA.

But what has Mr. Daugherty done? If you go -- well, let's talk about what Highland did first. If you'll go to the next page, Your Honor.

You can see we made two enormous document dumps to Mr. Daugherty. The first was just a couple of weeks after the settlement got approved by Judge Jernigan on May 5th. You'll find this at Exhibit 2. Highland delivered corporate books, governing documents, historical financial records, historical tax returns. And we told Mr. Daugherty at that time that subject to one final look through, we believe the production completes Highland's obligations under the settlement agreement.

But Mr. Daugherty I think later in the summer, in the fall, starting asking for more information, for some backup. And so on October 19th, 2022 Highland delivered another large batch of documents. They reproduced everything that had produced earlier in May. And now they produced certain backup invoices, certain, you know, quarterly investor summaries. It's described there. I don't think there's any -- going to be any dispute whatsoever that Highland delivered all of this stuff within six months of the settlement. And, again, if you go to Exhibit 19 -- I'm sorry, it's Exhibit 3, it's the cover email from Mr. Seery to Mr. Daugherty and he again says, we're done here. We've

given you the HERA and ERA books and records. We said it before and we're saying it again, we're doing you a favor. We're going to give you some more stuff. But we'll done here. He literally says, upon transmission of the information, Highland will have satisfied all of its obligations. Our involvement in HERA and ERA, your entities, will be complete. It can't be any clearer than that.

We don't hear from Mr. Daugherty again for a year and a half, until Mr. York writes me a letter. And you'll -- you'll see this stuff as it comes into evidence. Mr. York at the end of January 2024 sends me a very formal letter and he says, I need all of this stuff on HERA and ERA. And I don't immediately respond. I don't know exactly why. It's not my practice not to respond, but I didn't for whatever reason. But I did -- I did in early March and I said, Drew, no, we're done. We told you we were done. We're done. Then he had another lawyer write to me, we need all of the stuff that relates to HERA and ERA. And he said, if you don't give it to us, we're going to sue you. And I wrote back, I said, we don't owe you anything. Please sue us. We need finality here. We can't keep doing this. But he didn't sue. Nobody did anything. Nobody tried to enforce their rights. Instead, actually, they did do something. What they did is they commenced this HERA and ERA action in federal court here in Dallas.

And so knowing, at least from Mr. Daugherty's perspective that he didn't have all of the books and records, he still nevertheless didn't rely on us. He went and had him file that lawsuit. That was his choice. But he did it with his eyes wide open. And what he's trying to do here today is to get you to order us to produce something so that when he loses that Texas action, he can bring another claim against Highland and say, I lost because of you. I lost because you didn't give me the books and records. And he says it right in his pleadings. It says it in the last paragraph. It's Exhibit 1. He says it in his last paragraph for specific performance.

If the Court does not order Highland to comply with the terms of the settlement agreement and turnover the relevant books and records, whatever they may be, Daugherty will be irreparably harmed and he will be unable to adequately pursue his litigation that he's talking about. He's trying to manufacture a new claim today. That is what he's trying to do. But we need to focus -- I would encourage Your Honor to just focus on the plain and unambiguous provisions of the parties' agreement.

If we can go to the last slide. Because Mr. Daugherty completely represents what the very, very simple words are, the HERA and ERA books and records (spreadsheet maintained on Highland system). Highland has nothing to do with this,

except that it happens to hold certain of the HERA and ERA books and records. And, yet, in his answer at paragraph 14 Mr. Daugherty claims that he bargained for and obtained Highland's books and records related to HERA. I'm sorry, Your Honor, I mean no disrespect to Mr. Daugherty or his lawyers, but that's not what the provision above says in any way, shape, or form.

In their pre-trial brief they say that Highland failed to provide books and records that related to HERA and ERA. We didn't agree to provide books and records that relate to HERA and ERA. We agreed to provide the HERA and ERA books and records. They have to own them, not Highland. They again say that he's entitled to all ownership rights, property, data, documents, records relating to HERA and ERA. That's not what he bargained for. It's not what the plain and unambiguous language says. He needs all HERA and ERA materials. I don't even know what materials are. But he wants all of the materials in Highland's possession. He wants everything Highland possessed. Highland did not agree to give him anything, other than the HERA and ERA books and record (spreadsheet). And they only agreed to do so at minimal cost.

So I think what Mr. Daugherty had not done, what he's never done, this is not a document request. This provision of the settlement agreement is not discovery. He's trying

to -- he's trying to take discovery now. He could have served Highland with a subpoena in his federal action on behalf of HERA if he wanted to. I know there's a motion to dismiss. But nothing stops him from seeking leave. I mean, he can't do it now. It's years later. That motion was made two years ago. I would object on that basis alone. But he had so many opportunities. This is not the one. This is a contract.

We're here today to debate the meaning of a contract. We're not here to give discovery. We're not here to cause Highland to produce any books and records. We're not here to produce things that are related to HERA and ERA. We're here to see if Highland complied with its obligations to produce the HERA and ERA books and records. And we submit, Your Honor, that if you take a look at the prior slide and you take a look at the two letters from May 5th and October 22nd that are Exhibits 2 and 3, we are confident the Court will find that Highland in good faith with the term books and records provided more than they were ever required to provide.

That's all I have, Your Honor. Do you have any questions?

THE COURT: I do not. Thank you.

MR. MORRIS: Okay. Thank you very much.

THE COURT: Mr. York.

MR. YORK: Thank you, Your Honor. I'm a little old school. Do it without my own slides. But I will actually walk through some of what Mr. Morris had on his slides, point out some thing that he failed to mention to you.

So I want to start with a couple of housekeeping matters, just to make sure we're clear on something. Highland in the second page, second slide indicates that we have three causes of action; one, for breach of contract of the books and records; two, for specific performance; and then, three, relating to attorney's fees.

With respect to the breach of contract books and records. We do have that claim. We did assert both claim potentially for damages and then also for specific performance. We're only seeking specific performance today, Your Honor. I just wanted to be clear on that.

And then secondly, Your Honor, with respect to the attorney's fees. Given the Court's -- this Court's ruling on the motion to dismiss and also -- by Judge Jernigan and then, also, Your Honor's ruling with respect to the motion to stay, we're going to withdraw that without prejudice. We obviously, as you know, have appealed the issue on the motion to dismiss relating to the stay provision. But we're going to withdraw that without prejudice.

THE COURT: I don't know if I'm following you

there.

MR. YORK: I do not see how, given this Court's ruling, that this Court would find that there would be any bad faith in commencing the adversary proceeding --

THE COURT: Oh, okay.

MR. YORK: -- in violation of the stay provision in the parties' settlement agreement. Okay?

THE COURT: Okay. Now I understand. Thank you.

MR. YORK: So, Your Honor, let's first talk about the allowance issue. And Mr. Morris talked about how that the compensation and benefits statement is vague and unenforceable. Well, what Your Honor is going to hear is evidence today concerning what this provision actually meant in terms of that Mr. Daugherty was getting a true up. And I think I probably need to explain what was happening here so Your Honor fully understands.

In lieu of paying a cash bonus to Mr. Daugherty and to other executives at Highland, Highland decided that it would pay that bonus through its tax return in which it would claim losses and then attribute those losses to various profits interest partners' tax returns. And so instead of the cash having to come out of Highland's pockets, that bonus would ultimately be paid by the IRS through a refund.

And so the phrase refund is an estimated amount there

is something that Highland came up with. And it was accurate at the time, because it was something that Highland was simply estimating what it believed the refund amount would be, but it would be different depending upon the particular profits interest partners' situation in terms of their overall tax return that they were filing.

No one disputes, as Mr. Morris said, that Mr. Daugherty received a refund. And that's critical, Your Honor, to the fact that that meets the burden under Section 3.1 of Mr. Daugherty's employment agreement that the bonus be paid. The issue that we're here on is Mr. Daugherty's contractual right to be trued up at the end of the day if what Highland was attempting to pay and promised to pay through this refund is not what Mr. Daugherty actually ultimately gets because Highland has its partnership return amended and changed due to the IRS' audit, which is exactly what Highland promised to Mr. Daugherty at the time that they gave him the compensation of benefits statement in February of 2009, when he was still employed at Highland. And that's also why, contrary to Mr. Morris' arguments, Highland did not fulfill its obligations, because it has the obligation still to true up Mr. Daugherty if and when and once the IRS audit dispute is fully and finally resolved.

Mr. Morris said that Mr. Daugherty forfeited his tax refund rights once he resigned. And he pointed Your Honor to

slide 6, the section 4.5. And I want to talk about that in specific detail because there are two problems with Mr. Morris' argument. The first one is, Your Honor, he fails to point to the very first sentence in Section 4.5 which provides that in the event the executive terminates his or her continuous status as an executive and is not employed with a competing business within one year, the company shall have no further liability or obligation to the executive under the agreement or in connection with his or her employment hereunder, except -- and go to clause 3, Your Honor -- any amounts or rights to which the executive is entitled under any other written agreements with the company. That's exactly what the compensation of benefits statement is.

Additionally, Your Honor, as to the part that Mr. Morris highlights at the bottom, if you read the last two sentences of that part of 4.5 closely, what it's referring to is no right to severance if the form of the separation and release agreement is not signed. Severance being six weeks of base salary pay. It doesn't say that he's not entitled to any bonus that has been earned already.

Mr. Morris said that Mr. Daugherty declined to sign the separation and release agreement. And he did mention in passing that it was part of an all or nothing package. And that's important, Your Honor. Because what Highland

presented to Mr. Daugherty at the time in which he announced that he was resigning was a different settlement and release agreement form -- severance and release agreement form, excuse me. But also two other agreements, which they said, you have to sign these, as well. And you'll hear evidence as to why Mr. Daugherty objected to signing those other agreements because they related to interests that he had in vessels that Highland had created for employee retention. And it wasn't as if Highland was willing to accept just the separation and release agreement. It required an all or nothing at the end of the day. So Highland waived the provision, from its perspective, by demanding more than what it actually required.

At the end of the day what we have is a situation in which Mr. Daugherty had an accrued right to an unilateral contract with Highland. That is Highland would fully reimburse him for his liabilities associated with any changes to his personal taxes and his personal tax return that deviates from what the tax refund that Highland had promised him he would get in lieu of the cash bonus for that year.

So let's go to estimation. You're going to hear testimony, Your Honor, from T.J. Liles-Tims from Weaver that under the circumstances given where everything is at and what's known, that there are myriad of variables that are out there that it is impossible to reasonably and accurately

estimate what the ultimate liability could be to Mr. Daugherty as a result of the Highland IRS audit dispute. You're going to hear that the IRS audit dispute is still ongoing. That it's unclear when it's going to be resolved. It's unclear how it's going to be resolved.

Setting that aside for the moment, there are issues even with the estimation that Highland presents to the Court in the various categories. There are a myriad of assumptions that they've taken into account. And additionally, Your Honor, their -- their calculations do not include whatever interest and penalties Mr. Daugherty would continue to accrue after Highland filed its bankruptcy petition which would still be part of its principal liability. It's not as if it's a contractual interest that is accruing on a debt. It's part of its principal liability at the end of the day. And they're not even including that.

So, Your Honor, it is impossible to estimate what the potential liability is to Mr. Daugherty at the end of the day because there are a myriad of these unknown factors that remain in play due to the IRS audit dispute. Which, by the way, Highland will admit, Mr. Daugherty will also attest that neither really has any insight to because the IRS audit dispute is being handled by Strand Advisors, which is not -- which is the tax matters partner for Highland and is run by Jim Dondero.

So finally, Your Honor, I turn to the HERA books and records request claim. There's some context that the Court needs with respect to this, as well. And that is if you -- under the settlement agreement, the parties acknowledge that HERA and ERA had potential claims against, at that point in time, some current and some former Highland employees and executives relating to their activities when they were at Highland. And that under the terms of the settlement agreement, Mr. Daugherty was getting a transfer of the membership interest in Highland -- I'm sorry, in HERA and ERA in which then Mr. Daugherty on behalf of HERA and ERA could decide whether he wanted to proceed with any of those claims against those executives and other individuals.

And so the intent of the HERA and ERA books and records provision, as I call it, is that Highland would transfer to Mr. Daugherty not just its interest, a membership interest in HERA and ERA, but also the information and materials relating to those claims so that HERA and ERA could pursue them if they wanted to. Mr. Morris wants to focus on the parenthetical of spreadsheet in the agreement. And what he ignores is the fact that it says, such transfer will include. That is it's not an exhaustive list of some spreadsheet is the only thing that's going to be transferred. And you're also going to hear testimony and evidence that Highland transferred not a spreadsheet, but as Mr. Morris said, other

material and information that they had. But they didn't transfer everything. And that included invoices that HERA and ERA had been charged by various law firms relating to other litigation that had gone on, communications with those attorneys relating to those lawsuits and those claims, all of which gave rise to potential claims that HERA and ERA have against the executives and officers.

Mr. Morris also mentioned that there was a year and a half that passed between the time that the last transmission of information went and when I sent a letter. But what I failed to tell the Court and what the Court will hear evidence about is that there were numerous conversations going on between Mr. Daugherty and Mr. Seery discussing the books and records that Mr. Daugherty was seeking for HERA and ERA. And that Mr. Daugherty was trying to deal with this issue in a polite respectful manner and in a direct conversation between two business people.

And finally, Mr. Morris argues that the settlement agreement provides that Highland is only supposed to -- or only holds certain HERA and ERA books and records. That's not true. Because ultimately what, as Mr. Morris explained, HERA and ERA were a vessel that Highland was using for employee retention purposes. And so Highland was running HERA and ERA at the time. Highland is the one who controlled the possession, custody, and control of the books and records

and all of the information that related to HERA and ERA. Highland is the one who could transfer all of that information to Mr. Daugherty and to HERA and ERA, if it wanted to under the settlement.

And so what we're asking the Court to do is to order Highland to specifically perform and transfer those additional records and information so that HERA, not Mr. Daugherty, but HERA may utilize them in the lawsuit that it has filed against those executive separately in district court. All of which could have been done at a minimal cost through searches based upon the information that Mr. Daugherty had provided to Highland and to Mr. Seery and all of which all it had to be was emailed. And they didn't do it.

So we're asking the Court to order Highland to specifically perform in providing that information to Mr. Daugherty. You'll hear examples of what's missing as part of the evidence.

Thank you, Your Honor.

THE COURT: Thank you.

Before we get started on calling the first witness, let's take a quick 5-minute recess and then we'll be back out.

(Brief recess ensued.)

THE COURT: Okay. You may proceed,

Mr. Morris.

MR. MORRIS: Your Honor, I apologize, but I had one housekeeping item to clean up. Mr. Annable points out my errors. And I'm grateful for that.

THE COURT: Okay.

MR. MORRIS: And the only error that we have here, Your Honor, is I earlier moved into evidence the exhibits that were on Docket 107 and 128. We've gone through all of that. I'm not changing anything about that. But I do want to point out that at Docket 107 are only the documents that were filed that are not subject to the sealing order.

THE COURT: Okay.

MR. MORRIS: And so I just want the record to be clear that at Docket Numbers 109 to 123 are certain documents that the parties agreed to file under seal that Your Honor ordered to be filed under seal. They're reflected on the exhibit list that was filed on Docket 107, but I just wanted to clarify that if anybody ever wanted to find the actual documents, they would be at Docket 107 and then 109 to 123 and then 128.

THE COURT: Okay. All right. Mr. York, let me just ask you, do you have the same scenario? In other words, did you have some of your sealed documents that you wanted admitted into evidence that weren't already done, as you see it?

MR. YORK: Well, actually, so I think the exhibits between 109 and 123 are collectively the exhibits that were filed under seal. But we'll confirm all of that.

Let me confirm that, Your Honor.

THE COURT: Okay. We can come back to that at another time. But real quick while I have you there, Mr. York, so I've got an offer for admission into evidence Docket Numbers 109 through 123, which are the sealed documents. Do I have any objections?

MR. YORK: No objection.

THE COURT: Okay. Then documents that are located on the docket at Docket Numbers 109 to 123 will be admitted.

MR. MORRIS: Thank you very much.

THE COURT: Thank you.

MR. MORRIS: And with that Highland calls David Klos to the stand.

THE COURT: Mr. Klos, my law clerk over here will swear you in before you have a seat there.

(The witness was sworn by the Court's law clerk.)

(no omission)

DAVID KLOS

The witness, having been duly sworn to tell the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. MORRIS:

Q. Good morning, Mr. Klos. Can you hear me okay?

A. Yes.

Q. Okay. Let me know when you're comfortable.

A. I'm good. Thank you.

Q. Okay. Are you currently employed, sir?

A. Yes, I am.

Q. By whom?

A. Highland Capital Management, L.P.

Q. And when did you join Highland Capital Management, L.P.?

A. March 30th, 2009.

Q. Prior to joining Highland, were you employed at any other firm?

A. Yeah. I was employed at Deloitte.

Q. And how long were you at Deloitte?

A. I was at Deloitte from 2005 to 2009.

Q. And what position did you hold or what work did you do at Deloitte?

A. I was an auditor in the audit and assurance division.

Q. Okay. Do you have any licenses or certificates?
A. I'm a CPA in Texas.
Q. Did you go to college?
A. I did.
Q. Where did you go to college? When did you graduate? And what degree did you obtain?
A. I did undergraduate at Boston College. I graduated in 2004. My degrees were in accounting and finance. I did a masters of science in accounting at SMU. In 2005 is when I got that degree. And I got my MBA from SMU, I think at the end of 2009. It might have been 2010.
Q. Okay. So you graduated from college. You went to Deloitte for four years to serve as an auditor. And you've been at Highland since 2009; does that summarize it?
MR. RAYSHELL: Your Honor, I'm going to object. He's not been disclosed as an expert witness here. He's offering lay testimony under Rule 701. It feels like we're trying to establish his qualifications here.
THE COURT: Mr. Morris, response?
MR. MORRIS: I'm not offering any expert testimony whatsoever. I'm giving the Court the man's background so the Court can understand and appreciate why his experience leads him to do arithmetic.
THE COURT: Okay. The objection's overruled.
Q. Can you describe your employment history at

Highland beginning from the time you joined until the present?

A. Sure. So I joined March 30th, 2009. I was hired as a valuation analyst in the valuation department. After that time I had several, multiple, multiple, multiple job roles and responsibilities that have shifted over time. But some of those titles were senior financial analyst manager, senior manager, assistant controller, controller, chief accounting officer, and then in 2021 I became the CFO and COO.

Q. And in your capacity -- and in those capacities, did you have an opportunity, or did you participate in the preparation of any corporate tax returns?

A. Yes. I would have to bifurcate that. Significant involvement since 2021 with the role that I have now. Prior to that point more of a supporting role. There was an in-house tax department at Highland. So they would come to the accountants from time to time with questions and we'd certainly help out wherever we could. But no direct preparation of returns, but assistance as needed.

Q. And how did that change when you became the CFO in 2021?

A. Well, so one of the changes when I became CFO is we reduced head count and so we moved to an outsourced tax department. There were no tax people. So as CFO our outside

tax providers effectively reported to me and then I reviewed their work and have conversations with them and either sign tax returns or authorize them to sign returns that they prepare.

Q. Do you have any experience with IRS audits?

A. Yes, a little.

Q. Can you just describe your experience with IRS audits to the Court?

A. Yeah. So again to bifurcate, pretty minimal prior to the CFO role. Again, more something that I would hear about or maybe assist on the very edges with our old CFO. And then post-2021, you know, we've had an audit that I've led with our service provider.

Q. Let's just switch -- let's just get to the chase here. Are you aware that Highland is asking the Court to estimate Mr. Daugherty's reserved claim?

A. Yes. If the claim isn't disallowed.

Q. I appreciate the clarification. Let me restate the question.

If the Court allows Mr. Daugherty's reserved claim, are you aware that Highland is asking the Court to then estimate that claim?

A. Yes.

Q. Do you have an understanding of what that reserve claim is?

A. A general understanding.

Q. What is your general understanding of what the reserve claim is?

A. Effectively that the claim arises from the 2009 comp statement that he received. And that choose your word indemnify, backstop, make whole, he's -- he believes that he's entitled to a make whole depending on what results from the IRS audit. That's my basic understanding.

Q. Have you done any work to try to estimate the value of Mr. Daugherty's reserve claim in the event the Court allows it?

A. Yes.

Q. Can you turn to Exhibit 65 in your binder, please?

MR. MORRIS: Do you have that, Your Honor?

THE COURT: Yeah. I believe I'm pulling it up right now.

MR. MORRIS: Let me know when everybody's ready.

THE COURT: You said Exhibit --

MR. MORRIS: 65.

THE COURT: -- 65?

MR. MORRIS: Yes.

THE COURT: Okay. It will just be a moment.

MR. MORRIS: Uh-huh.

A. I'm there.

MR. MORRIS: If you'd like a hard copy, Your Honor, we do have an extra.

THE COURT: Yeah. If you have a hard copy, that will probably make it a little bit easier.

MR. MORRIS: Sure.

THE COURT: Thank you.

MR. MORRIS: May I approach, Your Honor?

THE COURT: You may.

MR. MORRIS: May I proceed?

THE COURT: You may.

Q. Mr. Klos, can you just describe for the Court what this document is?

A. This is a demonstrative that is describing various possible outcomes based on information that we've been able to determine either in our own records or through discovery with Hunton.

Q. And who prepared it?

A. I did.

Q. When did you prepare it?

A. Within the last month or so. I guess two months, judge a hedge.

Q. Okay. Can you -- let me see if I can just ask some simple questions.

You were here for my opening?

A. Yes, I was.

Q. And does this demonstrative reflect five different scenarios under which the reserve claim has been estimated?

A. Yes.

Q. Okay. I want to deal with the column on the left first.

IRS income adjustment to HCMLP. What does that column represent?

A. So that would be one of the inputs to the ultimate output of what the claim is. And if I could just step back a second. What you're seeing on the left side is those various inputs and the -- the arithmetic that I'm doing to get to the end answer of what should the claim be allowed at, if it is allowed.

Q. Okay. So let's go to the one below that, Daugherty's percentage of partnership. Am I reading that correctly that for every scenario it's 0.7403 percent?

A. You are. And that's straight off the K-1 and also in the IRS' 886Z form.

Q. And that's what referred to in footnote 1, Exhibit 17.886Z?

A. Yes, exactly. And I should point out that the end notes are important. So it's a good reminder.

Q. What are the end notes? Can you just describe generally what the end notes are?

A. Oh, just describing some of these numbers and where

they're derived from.

Q. Okay. Did you have -- did you bring any subjectivity to the determination of Daugherty's percentage of partnership interest?

A. No. And, again, that's right off the K-1 and right off the IRS form.

Q. Okay. And is the next -- I always forget, is it row or column going across?

A. What?

Q. Is it a row or a column, which goes up?

A. Oh, no, row.

Q. Row. Okay. So let's call it row.

Looking at the next row, you've got Daugherty's share of IRS income adjustment. Is that just mathematics, A times B?

A. Exactly. That's -- that's just -- that's math. That's not an input. It's just the product of A and B.

Q. Okay. And then the next one is 2000 applicable tax rate, 35 percent. That's the same for all scenarios; is that fair?

A. That's correct.

Q. Okay. How did you come up with that number?

A. So 35 percent was the highest individual tax rate in 2008. And so there -- I suppose there is a degree of subjectivity and that we defaulted to the most conservative

tax rate for that year.

Q. Okay. And --

A. Conservative meaning highest.

Q. Okay. And so then you've applied that tax rate to the -- to Mr. Daugherty's share of the income adjustment; is that right?

A. Correct. So just kind of following the flow. Income gets adjusted at Highland pursuant to however the dispute is fully and finally resolved. That is applied to Mr. Daugherty's percentage. That results in the amount of adjustment to his personal return. And then you tax effect that at 35 percent to come up with his potential under paying amount to the IRS.

Q. Okay. So the tax underpayment, the number in that row is the product of the ultimate adjustment times Mr. Daugherty's percentage interest times his tax rate?

A. That's right.

Q. Okay. And what -- what are you doing underneath that? What is statutory penalty?

A. Yes. So there is certainly possibility that penalties and interest will be applied to -- to Mr. Daugherty. Our position is that from a claim estimation standpoint, Highland shouldn't be responsible for those. But we -- we did go ahead and do the work on what those amounts would be if they were applied. And so statutory penalty is

the potential penalty amount that could be applied, depending on where the resolution falls out.

Q. And did you apply the maximum amount based on each of the scenarios?

A. Yes. And we -- we've applied based on -- in the case of -- I should make clear which cases we're talking about. In case five, one of the IRS adjustments was that they would apply statutory penalties so that the 20 percent number that you see out to the far right is the applicable penalty. And that's just straight off the -- the Code section.

Q. Uh-huh.

A. In the other scenarios you see different percentages. In case one the whole thing's reversed so everything is a zero. In cases two and four, based on the settlement offers that have been made thus far, in both cases either party agreed that there would be no penalties. So those cases reflect that assumption.

Q. So would it be fair to say that with respect to statutory penalties you either applied the law or you applied what the parties presented, as the case may be?

A. Correct.

MR. RAYSHELL: Your Honor --

A. With a small caveat that --

MR. RAYSHELL: -- I'm going to object again.

THE COURT: Hold on one second.

MR. RAYSHELL: I'm going to object again. We're asking him to apply the law. He hasn't been designated as an expert. We're combining facts and law here and offering expert testimony.

THE COURT: Any response, Mr. Morris?

MR. MORRIS: Sure. If you look at footnote 2, he points to the law.

Q. Mr. Klos, you can read; is that fair?

A. Yes.

Q. And --

THE COURT: Go ahead if you're going to rephrase or --

MR. MORRIS: Yeah.

A. Sorry, if you could just repeat.

Q. You can read, right?

A. Oh, yes, I can read. Sorry, I thought I answered you.

Q. And you're citing to the very specific -- it's Exhibit 30 to the backup?

A. Yes. I'm citing to the backup. It's the -- it's the Code section.

Q. Is it your opinion that these statutory penalties would be applied in each of these scenarios?

MR. RAYSHELL: Objection, Your Honor. That's

the basis of my objection.

THE COURT: You're basis -- I'm sorry, state the basis of your objection.

MR. RAYSHELL: So he's being offered as a fact witness under 701. But under 701(c) he's offering testimony, opinion testimony off his experience, experience at this point when he's applying the IRS Revenue Code -- or the Revenue Code, I'm sorry, to the analysis in this chart.

THE COURT: I'm going to overrule the objection.

Q. Mr. Klos, are you familiar with Mr. Daugherty's expert report?

A. Yes. Yes, I am.

Q. Does he -- does he rely on the same statutes that you do?

A. He cites to the same Code sections.

Q. Okay. Thank you.

Then you deal with potential interests; is that right?

A. Yes. And I need to clean up one point, because he said it's either based on the Code or the offers. Our case three, we just took the midpoint. So that is a little bit different. So we took 10 percent. That's a 50 percent haircut.

Q. I appreciate your candor.

The next one is applicable statutory blended rate.

Where did that come from?

A. Very similar answer. The applicable Code sections, IRS Code sections. And so those are straight off the Code sections. They're promulgated by the IRS regularly. You can look those up. And the Code sections describe how you're supposed to apply the interest. A, what interest rate should apply and then how to calculate it. And so we just followed that.

Q. And time outstanding, what is that referring to?

A. So that's -- that's a non-dollar number that's years. So 10.51 years. And that's the time from April 15th, 2009, which was the tax due date for individuals for their 2008 tax year, that's the beginning date. And then the end date is the petition date for Highland, that's October 16th, 2019. It's about 10 1/2 years.

Q. Why did you use the petition date?

A. Because that's the date when any possible unsecured pre-petition interest would stop accruing.

Q. Then did you calculate the interest accrued?

A. Yes.

Q. And how did you do that?

A. So that is just the -- the underpayment amount times the applicable rate times the number of years. And that gets you to interest accrued.

Q. And then what's the maximum theoretical amount?

What is that line intended to represent?

A. That's just an addition. So what that is is it's the sum of the row that says tax underpayment Daugherty, statutory penalty and interest accrued. So it's the sum of those three numbers.

Q. Okay. So up to this point it's any subjectivity at all, other than the use of the midpoint on the penalty as you pointed out?

A. Yeah. No, no subjectivity. Like I said on the tax rate we used the most conservative rate. So I suppose that could be construed as subjective, but we defaulted to the conservative.

Q. Okay. And then what's the last line, the income on previous refund?

A. So, again, we don't think that there should be liability related to penalties and interest. But even if there was, Mr. Daugherty's had the use of $1.3 million since 2009. And so we looked at what kind of a return that would have resulted in based on very conservative investing. We determined that if he could have just earned a 4 percent return for those same 10 1/2 years, that would have generated about $600,000 of income. We're not trying to be aggressive with any of the assumptions that we took. And so we basically just backed out the penalties and interest. So you don't -- you see numbers on this row that don't come close to

600,000, meaning it's an implied return of significantly less than 4 percent, you know, in some cases it's down less than a half a percent.

Q. Okay. So let's go -- let's finish up right now. Let's go back to the top. Let's look at the five cases that you have. Moving from left to right, how did you determine each of the five cases?

A. Sure. So from left to right, case one is the easiest to wrap your head around. That's the case going to its conclusion, wherever that goes, tax court and Dondero/Strand winning and reversing all of the adjustments that the IRS had given Highland. And so in that event, there's nothing due. There's no tax owed. There's no adjustment. So you see a lot of zeros on that column.

Case two -- I'm actually going to take these out of order. I'll go to case four. So in May of 2024, or thereabouts, April, May, 2024, the IRS offered a settlement offer to the tax matters partner. And we see that in both an email as well as a formal letter from tax matters partner's counsel to the IRS that describes that offer. And so column four is basically plugging in that IRS offer as the income adjustment. And then everything flows from there.

If I could bounce back to case two. Case two is the counter offer to that IRS settlement offer. And Strand, Mr. Dondero, I'm -- I'm not certain if it's Strand or

Mr. Dondero, but I think of them as the same. They offered to just kind of skip the whole adjustment and application of percentage interest and just resolve the whole thing for $8 million, just a single payment. So case two is just $8 million times Mr. Daugherty's percentage.

I'm going to skip over midpoint. And I apologize for bouncing around. But -- but case five is the results of the audit. So the audit concluded in late 2017, early 2018, I believe is when the closing conference occurred and the IRS proposed three adjustments. There was one that was approximately $73 million related to a hedging transaction. There was a second adjustment for about $93 million that was -- it's described as a change of accounting method, but it relates to the same hedging series of transactions. That's about 93 million. And the third adjustment that they proposed was the application of statutory penalties. So there's no a discrete number to number three, other than just look at the statute for the penalties because we intend to apply those. The sum of adjustment one and adjustment two is the number that you see on this demonstrative, the 166 million of global adjustment to income.

Q. Okay. So based on the work that you did, is it your conclusion that Mr. Daugherty's reserved claim is worth somewhere between zero and $430,976 with the only subjective -- with the only variable being the -- the

ultimate adjustment?

A. That's right. The other variable, I suppose that's out there is the open question of whether penalties and interest should apply.

Q. Uh-huh.

A. And obviously we believe that it shouldn't. But if it does, we've done the work.

Q. Okay.

MR. MORRIS: Your Honor, before I cede the podium, do you have any questions for Mr. Klos?

THE COURT: I'll let -- is it -- sorry, I'm not familiar with which one of the two he announced you as.

MR. RAYSHELL: Drake Rayshell.

THE COURT: I'll let Mr. Rayshell first before I have any questions.

MR. MORRIS: Okay.

I have nothing further then.

THE COURT: Okay.

MR. RAYSHELL: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. RAYSHELL:

Q. It's Klos, right?

A. It's Klos, like Santa --

Q. Okay. I've seen it in a transcript and it looked like Claus like Santa Claus, so I wanted to confirm that.

As a starting point, you don't know what Daugherty's solvency was from 2012 to today, do you?

A. I -- no, I don't.

Q. Okay. And you don't know if he's been able or has been investing in anything, do you?

A. That's correct.

Q. Okay. And, Mr. Klos, the -- the audit that we're discussing, it's still ongoing; is that correct?

A. No, that's not right.

Q. The IRS tax audit is not ongoing?

A. If I could clarify. The audit is concluded. There is a dispute resolution process that is certainly ongoing and is not fully and finally resolved. Understood. So it's on appeal and the IRS has yet to come to a final determination; is that fair?

A. I don't think that's fair.

Q. Okay.

A. I don't think that's fair.

Q. But the IRS is still analyzing the tax returns from 2008; is that correct?

A. I don't believe it is.

Q. Okay. But it's being appealed; is that fair?

A. Their audit conclusions are under appeal.

Q. Okay. Thank you, sir.

Mr. Klos, we've already established this, but you've

not been designated as an expert witness in this case; is that correct?

A. That's right.

Q. And you've not been qualified as an expert in the Internal Revenue Code in this proceeding either, correct, Mr. Klos?

A. I don't know, but I assume not.

Q. Okay. And you're not holding yourself out today as an expert in interpreting the Internal Revenue Code for the purpose of this hearing, are you, Mr. Klos?

A. I don't know if I can answer that because I don't know how expert is defined. But I'm not here as an expert. But I -- I am --

Q. So, sorry --

MR. MORRIS: Let him --

Q. -- a simple yes or no. So you are not here testifying as an expert today, correct?

A. Yes.

Q. Okay. And on top of that, because you're not here as an expert, you're not representing yourself as an expert in the IRS tax audit or appeals process; is that correct?

A. That's correct.

Q. And you're here just as a fact witness; is that fair?

A. I'm not sure. That's a legal concept. I don't

know what --

Q. You're here to do arithmetic; is that correct?

A. I think that's oversimplifying. But basically, yes.

Q. Okay. Well, I believe Highland's counsel stated that you were here to do simple arithmetic for the judge; is that fair?

A. I don't disagree with that.

Q. Based on those things, you'd agree with me that you're not sitting here in a position to offer an opinion on the meaning, interpretation, or application of any provision of the Internal Revenue Code; is that fair?

A. I don't know how to answer that.

Q. Okay. Are you applying an interpretation of the Internal Revenue Code to your analysis today?

A. I'm reading the Internal Revenue Code and -- and I'm reading and interpreting the Code.

Q. Okay. So you are, then, even though you're not here as an expert, correct?

A. I don't know how to answer that question.

Q. I believe you stated a moment ago that in the -- in handling Highland's affairs when you've dealt with tax disputes that you have a service provider that you're actually handing out tax returns and analysis to; is that correct?

A. I wouldn't characterize it that way. We utilize a service provider.

Q. Okay. So you utilize a service provider for tax reasons, we'll say; is that fair?

A. Yes.

Q. And that service provider is Skyview?

A. No.

Q. It's not?

A. It used to be, but it's not at this time.

Q. It's not currently Skyview, okay.

A. Correct.

Q. And is Frank Waterhouse involved with Highland's tax analysis and returns?

A. Not --

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

THE COURT: What's the objection?

MR. MORRIS: Just a moment in time. Are you asking about today?

Q. Is Frank Waterhouse involved in Highland's tax analysis for any purpose today?

A. No.

Q. Mr. Klos, if you would, do you still have Exhibit 65, the demonstrative in front of you?

A. I do.

Q. Okay. Would you look down to row H where it says, time outstanding (years); do you see that?

A. I see that.

Q. Okay. And it says 10.51 years, correct?

A. It does.

Q. And according to note four we were just walking through, that's calculated from April 15th, 2009 to October 16th, 2019; is that right?

A. Yes.

Q. And as you stated a moment ago, tax returns for the fiscal year 2008 were due on or around April 15th, 2009, correct?

A. For our purposes here, yes, you could have extended the tax payment, which they'll be due on the same date. So for our purposes today, yes.

Q. Okay. And Highland filed its bankruptcy petition on October 16th, 2019, correct?

A. Yes.

Q. And as you discussed with Mr. Morris, that's why you selected October 16th, 2019 as the end date of your calculation, right?

A. That's correct.

Q. And you selected that date because Highland's bankruptcy filing affected the accrual of interest on Highland's IRS debts; is that correct?

A. Can you ask the question again?
Q. Sure. You selected October 16th, 2019 as the end date for your calculation because Highland's bankruptcy petition affected the accrual of interest on Highland's IRS debts, correct?
A. I wouldn't characterize it that way. We selected that date because that is the petition date.
Q. Okay. But I believe you testified a moment ago that as of that date interest stopped accruing, correct?
A. That's my basic understanding under bankruptcy is unsecured pre-petition claims don't accrue interest beyond the petition date.
Q. Okay. But Highland's bankruptcy filing and the accrual of interest didn't affect Mr. Daugherty's personal accrual of interest on October 19th -- October 16th, 2019, did it?
A. If I could ask for a clarification. Are you asking could Mr. Daugherty have interest accruing beyond that date that he's responsible for?
Q. That's exactly what I'm asking.
A. Then, yes.
Q. Okay. So easy math then. April 15th, 2009, today, April 17th, 2026, that's 17 years; is that correct, Mr. Klos?
A. Yeah. Thereabouts.
Q. So by your calculation, looking again at the time

outstanding and your testimony now that his interest has not stopped accruing, it's possible that your calculation's wrong, it could require a 17-year basis; is that fair?

A. No, that's not fair.

Q. Okay. So Mr. Daugherty's personal debts that he owes the IRS --

A. That's a different question.

Q. If -- well, that's the question I'm asking.

A. You're asking two different questions.

Q. Okay. Let me be clear then.

We've established that on October 16th, 2019 Highland's interest stopped accruing because of the bankruptcy petition, correct?

A. Interest on Mr. Daugherty's claim stopped accruing.

Q. Okay. But for Mr. Daugherty, if he owes the IRS money on an ongoing basis because he underpaid or overpaid, the interest accruing on that amount did not stop as of October 16th, 2019, did it?

A. The interest to him did not stop, but we're here to estimate Highland's potential liability under a claim. And that interest stops on the petition date.

Q. Okay. So Mr. Daugherty's interest could exceed 10.5 years. Your claim is just that Highland wouldn't be responsible for it?

A. That's right.

Q. Okay. And we disagree on that. But you made an assumption here that 10.5 years was the appropriate calculation for Mr. Daugherty's exposure, correct?

A. No. We -- that's part of the -- that's part of the calculation to get to the estimation amount.

Q. Understood. And the estimation amount is an estimate of what Mr. Daugherty's potential exposure, or his claim against Highland is, correct?

A. No. The estimation amount is Highland's potential liability. It's Highland's potential obligation under the claim.

Q. To Mr. Daugherty?

A. To Mr. Daugherty. He filed the claim.

Q. Okay. I think we were saying the same thing there with two sides of the same coin.

A. I don't think we were, but that's okay.

Q. Okay. And I heard you testify at the end of your direct that you had multiple assumptions you were basing these calculations on; is that correct?

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

A. I wouldn't describe --

THE COURT: Hold one second.

Mr. Morris, I apologize. You keep objecting based on form. I mean, what is the issue?

MR. MORRIS: Because I didn't -- because that mischaracterizes both what I said and what the testimony is. He could just ask the question.

THE COURT: All right. Mr. -- sorry --

MR. RAYSHELL: Rayshell.

THE COURT: -- Rayshell, do you have a response, or are you just going to --

MR. RAYSHELL: I'll restate the question, Your Honor.

THE COURT: Okay.

Q. Your calculations are based on a series of assumptions, correct?

A. They're based on a series of inputs. I don't know if I would go so far as to say assumptions. They're based on objective data points that we're able to use.

Q. Okay. Objective data points that include applying the Internal Revenue Code; is that fair?

A. Objective data points like applying the 20 percent one-time statutory penalty that's contained in the IRS Code section, yes.

Q. Okay. So under your five scenarios you have here, there are at points an assumption made to get to your final calculation; is that fair?

A. I don't think that's fair. I -- I don't think that's -- I don't think that's the way I would characterize

it.

Q. Okay. We'll move on then.

Mr. Klos, you're familiar with the settlement agreement between Highland and Mr. Daugherty that is the subject of today's trial, correct?

A. Generally, yeah.

Q. Okay. And do you have -- is that Highland's exhibits in front of you?

A. It is.

Q. Okay. Would you mind turning to Highland Exhibit 5, please, on page 12?

A. I'm sorry, did you say page 12?

Q. Page 12 within Highland 5 there.

A. Thank you.

I'm there.

Q. Okay. And if you'd go with me to Section 10.

A. I'm there.

Q. Okay. The first sentence reads, the HCMLP parties set forth on Appendix A hereto are currently employed by the debtor or HCMLP released parties. Do you see that?

A. I see that.

Q. And HCMLP, for the purposes of today's hearing refers to Highland; is that correct?

A. I don't know. I assume so. However it's defined. But I would assume that it relates to Highland Capital

Management, L.P.

Q. Okay. Now if you would, please turn with me to Appendix A, which is going to be the last page of Highland 5.

A. Okay. I'm there.

Q. Okay. And if you go down that list to number 10, that's you listed there, correct?

A. That's me.

Q. Okay. So you received an express release from Mr. Daugherty under the settlement agreement; is that correct?

A. That's my general understanding. I don't know exactly. I probably need a lawyer to interpret that. But that's my general understanding.

Q. Okay. But you would agree with me that the language that we read from Section 10 says those listed in Appendix A are a part of the HCMLP released parties, correct?

A. Yes. They are part of that group, yeah.

MR. MORRIS: Your Honor, if I may. If Mr. Daugherty is really contending that by testifying today Mr. Klos is using the benefit of his release, he should say that explicitly and we should deal with that right now. This is outrageous.

MR. RAYSHELL: That's not the basis of this line of questioning, Your Honor.

THE COURT: I'm going to let the witness be

questioned along these lines. I'll overrule the -- yeah, I'll overrule the objection.

Q. Mr. Klos with that, you're aware that Mr. Daugherty sued Highland and others in the Delaware Chancery Court, right?

A. Generally. I don't know the specific parties he sued. I believe Highland was one. I'm not sure who else.

Q. Okay. You're aware of the litigation though, correct?

MR. MORRIS: Objection to the form of the question. There is so much litigation in Delaware. I would really appreciate specificity.

MR. RAYSHELL: That's fair.

Q. In October 2019 you took the stand on behalf of Highland in litigation against Daugherty; is that correct?

A. I took the stand. I don't recall who the parties were. I was in Delaware. I testified in October of 2019, yes.

Q. Okay. And you testified at that trial that a significant portion of Highland's legal spend defending against Daugherty's claims was allocated to HERA, correct?

A. I don't recall my testimony specifically.

Q. Would it help you if I refreshed your recollection?

A. Sure.

Q. Okay.

MR. RAYSHELL: Your Honor, if I may approach.

THE COURT: You may.

MR. RAYSHELL: Your Honor, what we're looking at here is -- I will concede a condensed copy of the filing at Docket 1280 regarding Mr. Daugherty's proof of claim. It's condensed to include the lead page, his proof of claim, and then a copy of the transcript from proceedings occurring in the Delaware Chancery Court on October 15th, 2019.

Q. Mr. Klos, for your benefit, would you please turn to what at the top what we listed as page 398 out of 1207?

A. I'm there.

Q. And starting at line 15, which briefly I'll represent to you that if you look at the top of this page it says D. Klos direct. This is a portion of your direct that was offered to the Delaware Chancery Court in October of 2019.

If you would, please, just read to yourself starting at line 15 through line 10 on page 464.

A. Okay. Just give me a moment.

Okay.

Q. Does that reflect -- refresh your recollection regarding your testimony in October of 2019?

A. Not really, but I can read it.

Q. And according to this transcript, you testified that a significant portion of Highland's legal spend

defending against Daugherty's claims was allocated to HERA, correct?

A. I think I testified that the legal spend was split between the two entities and Highland funded it. And the words speak for themselves.

Q. Okay. And the words there, you testified that 93 percent of Highland's legal spend was allocated to HERA when it was invoiced, correct?

A. 93 percent of the invoices were allocated to HERA.

Q. Okay.

A. 100 percent of the invoices were paid by Highland.

Q. Okay.

A. And there was a receivable. And I'm not going to just repeat this, but the testimony is, it says what it says.

Q. Okay. But it's your recollection that 93 percent were allocated to HERA, correct? Just simply put.

A. 93 percent was allocated to HERA, that's right.

Q. Okay.

A. It's approximate. It's not to the --

Q. Fair. That's fair. Your approximation is similar to mine saying a significant portion, 93 out of 100 percent. I'll agree with you on the approximate.

Now, Mr. Klos, you're aware that Mr. Daugherty alleges that that allocation from Highland to HERA was fraudulent, correct?

A. I'm not sure what he alleges.
Q. Okay. Well, you're aware that Mr. Daugherty alleges that certain of Highland's former principals committed fraud against HERA through those allegations, correct?
A. Can you define principals for me, please?
Q. Sure. Old Highland. I'll keep it simple. But listing the names of the unreleased parties under the settlement agreement, he's alleging that former principals, such as Mr. Dondero, Mr. Ellington, and others were fraudulently allocating funds from Highland -- I'm sorry, invoices, legal fees to be specific, from Highland to HERA's books?
A. I don't know the specifics of the allegation. But I know he has alleged bad acts by those actors.
Q. Okay. So you're aware he's bringing claims against them on behalf of HERA, correct?
A. Yeah. Those individuals among others.
Q. Okay. Now if you would, please -- sorry, we've got this stack of paper in front of you. But if you'd go back to Highland 5, the settlement agreement in the binder.
A. Oh, sure.
Okay. I'm there.
Q. And if you'll turn to page 10, Section 8 with me.
A. I'm there.

Q. Okay. Looking at Section 8, if you'll just read along with me. The first sentence states, The parties acknowledge and agree that as of the date hereof, HERA and ERA have no material assets other than potential claims, correct?

A. That's what it says.

Q. Okay. And then the next sentence provides that to facilitate recovery of such potential claims, HCMLP will transfer its interest in HERA and ERA to Daugherty, correct?

A. I don't think you read that fully, unless I missed it. And if so, I apologize.

Q. Sure. I was advancing from the first sentence to the second sentence.

A. Are you starting with, to facilitate?

Q. Correct.

A. Okay.

Q. And you'd agree with me that it states, to facilitate recovery of such potential claims, HCMLP will transfer its interest in HERA and ERA to Daugherty? And I'll concede, there's an exception or carveout in there between parens that's irrelevant to our discussion here that lands between those two.

A. Okay. Yeah, you excluded the middle part. Can I just read it? I mean, this document says what it says. It says, 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 release parties, HCMLP will transfer its interest to HERA -- in HERA and ERA to Daugherty. That's what it says.

Q. Okay. So since you've read the whole sentence for the Court's benefit it says, To facilitate recovery of such potential claims. And then we'll take the paren that you added. It's an exception which states, Which expressly excluded any and all claims by or in the name of HERA and ERA against any HCMLP release parties, correct?

A. That's what it says.

Q. Okay. And earlier we established that HCMLP released parties includes you, that's that Appendix A, correct?

A. I'm one of the HCMLP released parties.

Q. Okay. So would it be fair to say that facilitating recovery of potential claims doesn't include claims against the HCMLP released parties?

A. I'm not going to speculate that. This is a legal document. I didn't look at it. I haven't -- I didn't review it. The document stands for itself.

Q. Okay. And that's fair. Because as I said, the exception here is not relevant to our discussion. But since we've acknowledged the exception the sentence begins, To facilitate recovery of such potential claims, going past the

exception, HCMLP will transfer its interest in HERA and ERA to Daugherty, correct?

A. Yes. The document says what it says.

Q. Okay. And the next sentence says, Such transfer will include the HERA and ERA books and records spreadsheet maintained on HCMLP's system. Did I read that correctly, Mr. Klos?

A. I believe you did.

Q. Okay. So the settlement agreement then provides that Highland will transfer its interest in HERA and ERA to Daugherty to facilitate the recover of potential -- recovery of potential claims, correct?

MR. MORRIS: Your Honor, objection. I've listened to this for 5 minutes. He said what he said about his knowledge about the document. The document says what it says. He -- I don't know why we're having a debate with this witness.

THE COURT: Yeah. I'm not quite sure where this is going either.

MR. RAYSHELL: The -- I think we're quickly going to turn there. And to his point, the document does say what it says. It's just been getting tripped up on an exception I was hoping to expedite for the purpose of today's trial.

THE COURT: Okay. Well, I mean, and he's

answered the document says what it says and the document's in evidence so --

MR. RAYSHELL: Okay.

THE COURT: So the objection's sustained.

MR. RAYSHELL: Understood. Thank you, Your Honor.

Q. Mr. Klos, that transfer included the books and records according to the language of the document, correct?

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

A. The document speaks for itself. The document says what is going to be transferred.

Q. Okay. And as part of transferring books and records, you helped collect information to forward to Mr. Daugherty; is that correct?

A. Yes, I did.

Q. Okay. Which included some accounting information; is that right?

A. Yes. With help. I don't know that I collected it directly. But I would have asked somebody to -- to provide it.

Q. Okay. And it also included some of the governing documents of HERA and ERA; is that correct?

A. The -- what was transferred over did. I don't think I was involved in those -- that collection.

Q. Okay. And that collection, however, did not include all of Highland's emails regarding HERA and ERA; is that correct?

A. It did not include all of Highland's emails regarding HERA and ERA.

Q. Or the attachments to those emails presumably; is that fair?

A. Correct. I mean, I suppose it's possible that there might be some population of emails that have attachments that we did provide, but I don't know.

Q. Okay. And in collecting those, you also didn't collect all of the invoices that Highland -- in Highland's possession regarding legal fees allocated to HERA; is that correct?

A. You need to be clear on when.

Q. For the time period 2019 -- prior to 2019 the invoices that were being allocated, the 93 percent, those have not been produced as a part of the production of the books and records?

A. No, they have. They have. We produced over 300 invoices.

Q. Okay. So it's your testimony today then that all of those records have been produced prior to 2019?

A. Those invoices have been produced. There was over 300 of them.

Q. Okay. And those would be, to be clear, the invoices that were allocated from Highland to HERA?

A. They were the invoices -- I don't know with exact precision. But these were the invoices that ultimately were reflected on HERA's records as expenses.

Q. So it's fair to say then that we got some, but not every invoice that Highland allocated to HERA?

A. You got over 90 percent. That was as much as we could find. I'm sure if we, you know, reached to the ends of the earth we could find the other 30 or so that we couldn't find. But we did provide over 300.

Q. Okay. And, again, it was your testimony that we didn't produce all of the emails, though, to HERA, correct?

A. Correct. Not emails, that's right.

Q. And those emails between Highland personnel discussing legal fees allocated to HERA would be relevant to understanding HERA's potential claims, though, wouldn't they?

A. That's not a question for me. I don't know what would be relevant. I don't know the nature of the claims in detail, so I'm not prepared to answer that.

Q. But additional documents or available information would help facilitate the recovery of HERA's potential claims; is that fair?

A. I have no idea.

MR. RAYSHELL: Pass the witness, Your Honor.

THE COURT: All right. Let me just ask a couple of questions that I have.

Mr. Klos, if you'll go back to Exhibit 65.

THE WITNESS: Okay. I'm there. I'm there. Thank you. Sorry.

THE COURT: I just want to make sure I'm understanding this correctly. At the -- at line K, that's a calculation that you did based on what you all believe he, he being Mr. Daugherty, should have or could have earned based on investing the refund that he received in 2009, I believe it was, in 2009; is that correct?

THE WITNESS: That's correct.

THE COURT: So help me understand why does that number fluctuate based on the amount of the line A?

THE WITNESS: It's really -- it's all those numbers are, the reason that they fluctuate is that in cases three, four, and five, those numbers are exactly equal to the total of penalties and interest. So what we did is we basically said, you should have earned income up to the penalties and interest that we calculated in those cases.

THE COURT: Okay. And this is -- this is an assumption, you have no idea -- I believe you testified you have no idea whether he invested that money or what his investments have or haven't done?

THE WITNESS: Correct.

THE COURT: Okay. And I believe you also testified that since 2012, which is when I presume Mr. Daugherty was no longer with Highland, Highland would have no idea what his tax attributes are, whether he has losses or gains or income or --

THE WITNESS: Certainly beyond 2012 I think we received returns up to tax year 2008 and didn't receive returns thereafter. So -- so, yes, I don't have knowledge of those periods.

THE COURT: Okay. But is it fair for me to say then that essentially you all have -- if I look at this demonstrative and basically take everything under -- I think I just answered my own question, but I'll go ahead and continue to ask it. If I take everything under line E, I get the same amount, the income reduction doesn't matter, if I take away everything after line E?

THE WITNESS: That's -- that's right. There's a small caveat. It does matter in case two. But I think for your purposes, that's exactly right. You'll see line E matches estimation amount, except in case two.

THE COURT: Okay.

THE WITNESS: And the only reason for that is it's such a di minimus amount of money, you know, being able to earn $60,000 on 1.3 or whatever the number is over 10 plus years was --

THE COURT: Let me ask this.

THE WITNESS: Yeah.

THE COURT: Well, let me look at note 6 real quick.

Okay. So why in case two do we not have -- well, that see note 6 on both of those, are you taking 8 million in line A and multiplying that by line B and multiplying that by line D to get to line E?

THE WITNESS: No. And I'm sorry to cut you off. What we're really doing is we're putting 8 million in line A. We're leaving line B at .704 -- 7403. And there is nothing for applicable tax rate. Because that offer was just a simple, we're going to pay you to resolve everything and what we're going to pay you is $8 million. So Mr. Daugherty's percentage of $8 million would just be his share of the partnership. There's no additional application of a tax rate.

THE COURT: And that's the 59,000 --

THE WITNESS: That's the 59,000. Yeah, if you did the math it would be 8 million times .7430 percent equals 59,224.

THE COURT: All right. Thank you.

Mr. Morris, any redirect?

(no omission)

REDIRECT EXAMINATION

BY MR. MORRIS:

Q. Just one question, Mr. Klos.

If the Court decides not to reduce an estimated amount for the time value of money, would your analysis remain the exact same, except you would eliminate line K?

A. That's right.

MR. MORRIS: No further questions, Your Honor.

THE COURT: All right. Thank you.

All right. You may step down. Thank you.

THE WITNESS: Thank you.

MR. MORRIS: Your Honor, I'm next going to call Mr. Daugherty's expert, Mr. Liles-Tims.

THE COURT: Okay.

MR. MORRIS: Just so we can get this piece of the case out of the way and I can get him out of the courtroom and get him on his way.

THE COURT: Okay. I was just about to ask, are we -- are you wanting to have Mr. Klos excused, or not yet because you're going to be --

MALE SPEAKER: I think he's going to hang around for a few minutes, but he can --

MR. MORRIS: You can leave. It's okay, Your Honor.

THE COURT: Okay. Well, let me -- let me just

make sure. Mr. York, are you all agreeable that Mr. Klos can be excused?

MR. YORK: It's fine with us.

THE COURT: Okay. All right.

MR. YORK: And a housekeeping matter about the sealed exhibits earlier, Your Honor.

THE COURT: Yes.

MR. YORK: I checked, our sealed exhibits were filed at Docket Number 125.

THE COURT: Okay.

MR. YORK: So with the caveat that I stated earlier that we were withdrawing 58 to 77, to the extent that any of the sealed exhibits on Docket Number 125 are within that range, we are moving to admit all of the sealed exhibits at Docket Number 125.

THE COURT: Okay. Any objections, Mr. Morris?

MR. MORRIS: No, Your Honor, it's fine.

THE COURT: Okay.

MR. MORRIS: So, again, Highland calls T.J. Liles-Tims.

THE COURT: Sorry, one moment. I'm trying to figure out something real quick.

MR. LILES-TIMS: Your Honor, may I bring water up to the stand?

THE COURT: I believe there's water on the

stand.

MR. LILES-TIMS: Oh, there is, okay.

THE COURT: Yes. I don't believe that Mr. Klos took a sip of it. If that's your bottle, you're welcome to bring it. I won't make you share water.

Sorry, I've got a communication here about audio. Are we having any audio problems?

Okay. Sir, I'll have my law clerk swear you in first.

(The witness was sworn by the Court's law clerk.)

THE COURT: You may proceed, Mr. Morris.

MR. MORRIS: Thank you very much.

T.J. LILES-TIMS

The witness, having been duly sworn to tell the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. MORRIS:

Q. Good morning, sir.

A. Good morning.

Q. Good to see you in person.

A. Good to see you.

Q. I just have hopefully not a very lengthy examination here.

You're a partner today at a firm called Weaver & Tidwell; do I have that right?

A. Yes, sir.

Q. And your expertise lies in business valuations, fraud examinations, and quantifying commercial damages, correct?

A. Yes, sir.

Q. You're not a CPA, correct?

A. I am not.

Q. You do not hold yourself out as an expert in IRS audits, correct?

A. I do not agree with that.

Q. Okay. You haven't personally represented any clients in an IRS audit, correct?

A. In some manners, yes. In terms of in its totality, no.

Q. Okay. And what do you mean by, in its totality?

A. In terms of the audit itself as much as subject matters that are being audited.

Q. Okay. So you play a supporting role; is that fair?

A. That is correct.

Q. Okay. You've never testified in tax court, correct?

A. That is correct.

Q. Okay. And you don't hold yourself out as an expert in bankruptcy law, correct?

A. No, sir.

Q. You've prepared opinions in this case; is that

right?

A. Yes, sir.

Q. But none of those opinions take into account Section 502 of the Bankruptcy Code, correct?

A. They do not.

Q. You didn't even review that section, fair?

A. That is correct.

Q. You're not offering any opinion as to what the term, estimate, means for purposes of Section 502 of the Bankruptcy Code, correct?

A. I would have to read 502 to indicate that.

Q. And you haven't done that as of today, correct?

A. I have not.

Q. Okay. You're not offering any opinion as to whether Mr. Daugherty -- withdrawn.

You're not offering any opinion as to whether the failure to estimate Mr. Daugherty's claim will unduly delay the administration of the Highland bankruptcy, correct?

MR. BURLEY: Your Honor, I would just object on the basis of relevance. Mr. Morris can ask these questions if he would like to, but it's very clear from my direct of this expert, as well as his written report that he's not being designated nor has he been designated as someone who is going to opine on estimation or the Bankruptcy Code. He can ask these questions, but that's not at all what

we designated him for so there's really no relevance to these questions.

THE COURT: I'm going to overrule the objection. You may proceed.

Q. I apologize if I just asked you this question, but I got interrupted.

You're not offering any opinion as to whether Mr. Daugherty's failure to estimate -- withdrawn.

You're not offering any opinion as to whether the failure to estimate Mr. Daugherty's claim will unduly delay the administration of the Highland bankruptcy case, correct?

A. That is correct.

Q. You're not offering any opinion as to the estimated value of Mr. Daugherty's claim, correct?

A. I disagree.

Q. Isn't it your opinion that there's too much uncertainty and that estimating Mr. Daugherty's claim is impossible today?

A. I have indicated my opinion is is there are too many variables.

Q. So you're not offering an estimate of the value of Mr. Daugherty's claim today, correct?

A. Well, again, I -- I disagree. I have offered an opinion as to how to calculate it once the information has been provided.

Q. Okay.

A. But in terms of actually having that information, I do not have that.

Q. All right. So I appreciate the point. Is it fair to say that it's your opinion that you cannot quantify Mr. Daugherty's claim today for estimation purposes because there's too much uncertainty?

A. I would agree.

Q. Thank you very much.

In your opinion you would have to engage in too much speculation in order to estimate Mr. Daugherty's reserved claim today; is that fair?

A. I would agree.

Q. Okay. And the reason that you believe a reasonable estimate can't be made is because you don't know what the final deficiency will be after the dispute resolution process plays out with respect to Highland's 2008 income tax returns; is that fair?

A. Well, you utilized the term, deficiency. So I believe that I don't agree with the concept of deficiency as much as what may be owed.

Q. Okay. So the reason you believe a reasonable estimate can't be made today is because you don't know what ultimately may be owed with respect to Highland's 2008 income tax return?

A. Well, that is one of a multitude of different factors.

Q. Okay. And that number of what will be owed will only be known when either the tax matters partner settles the case on behalf of Highland, or there is a final judicial resolution from the Tax Court; is that right?

A. I would agree.

Q. Okay. But at that point there won't be anything to estimate; is that right, because you know exactly what is owed?

A. I disagree.

Q. Okay. So even then it's your expert opinion even then you won't be able to estimate the value of Mr. Daugherty's reserve claim?

A. I would agree.

Q. Okay. Do you have a binder in front of you there, sir?

A. Yes, sir, I do.

Q. If you could just open up to Exhibit 59.

A. Yes, sir, I'm there.

Q. Okay. This is your expert report; is that right? And, please, take your time.

A. Yes, sir.

Q. And you coauthored this report with Garry McIntosh; is that right?

A. That is correct.
Q. Okay. Mr. McIntosh is a CPA with tax and audit experience, correct?
A. That is correct.
Q. But he's not here to testify today, correct?
A. He is not.
Q. In preparing your report with Mr. McIntosh you made no effort to speak with the tax matters partner to learn about the history or status of the audit, correct?
A. Can you restate that for me, please?
Q. In preparing your report and doing your diligence, you didn't make any attempt to speak with the tax matters partner regarding the history and status of the audit; is that fair?
A. I did not.
Q. Okay. And you're aware that Hunton & Williams has been representing the tax matters partner in connection with the audit from the beginning?
A. That is my understanding, yes.
Q. And in connection with your preparation of this report, you made no effort to speak with anybody at Hunton & Williams concerning the history of the status of the audit, correct?
A. Outside of reviewing subpoenaed documents, no, sir.
Q. Okay. You didn't review all of the documents that

were produced by Hunton in response to the subpoena, correct?

A. I did not.

Q. Okay. You just read what Mr. Daugherty's lawyers chose to give you; is that fair?

A. I read what I requested specifically and was provided by Mr. Daugherty's attorneys.

Q. When did you learn that a subpoena was served on Hunton & Williams for documents related to the audit?

MR. BURLEY: Objection, Your Honor, relevance. It's no secret that in the case Hunton & Williams was subpoenaed for documents. This witness' knowledge of when, how that occurred, objections that were served, dispute resolution between the parties about that, that has no bearing on Mr. Liles-Tims' expert testimony in this case. He reviewed the documents that are relevant to his analysis. Those are part of his report. He cited them. Mr. Morris had the chance to depose him already. What he's asking right now is not relevant to this analysis.

THE COURT: Response, Mr. Morris?

MR. MORRIS: I sense a bit of defensiveness here, Your Honor, and I understand why. Highland served the subpoena on Hunton Williams. Mr. Liles-Tims is going to testify that he knows that thousands of documents were produced. And yet when we look at the list of documents that he reviewed, it's just a handful of documents for Hunton &

Williams. And so I think it goes to the credibility of his analysis, his credibility of the report that he was aware that there were thousands of documents related the audit and he found no interest, no intellectual curiosity in knowing what was happening as part of the audit.

I just -- I mean, it's kind of standard. What documents did you review? I can do it that way.

THE COURT: That's what I was going to say. Let's -- I don't know whether we need to get into the minutia of when was the subpoena served --

MR. MORRIS: It was just going to be a couple of questions.

THE COURT: -- and responses.

MR. MORRIS: But that's fine.

THE COURT: Let's get into what documents might have been produced and --

MR. MORRIS: Sure.

THE COURT: So I'm going to sustain the objection.

MR. BURLEY: Thank you, Judge.

Q. Can you go to the last page of the exhibit, sir?

A. Yes, sir, I'm there.

Q. This lists all of the documents that you reviewed; is that right?

A. These are -- this is a list of the documents

reviewed and relied upon, yes.

Q. Okay. And which of these documents did you specifically request?

A. I requested a multitude of documents. In terms of which specific ones, I -- I can't recall at this time.

Q. Okay. But you understood at the time you were doing your work that Hunton & Williams had produced thousands of pages of documents; is that fair?

A. Not until actually documents were produced did I learn that.

Q. Okay. And the only Hunton & Williams documents that you reviewed are these couple that are in this statement, correct?

A. I would disagree to your term, couple. Usually that means two. But there's four there.

Q. I apologize. I stand corrected.

You reviewed a total of four documents that were produced by Hunton; is that fair?

A. I would say that I reviewed four documents that are Bates labeled Hunton.

Q. Okay. And if there were any other documents that were Bates labeled Hunton that you reviewed, they would be on this list; is that right?

A. I don't know that that's true because there could have been documents within the subpoenaed documents that were

either produced by Highland or produced by Daugherty that were not Bates labeled Hunton. So they may have been produced by one of the parties in this matter.

Q. You haven't studied the facts concerning the underlying transactions that are the subject of the IRS audit, correct?

A. Outside of what was -- outside of the correspondence reviewed between the IRS and Hunton, I have not.

Q. Okay. You didn't attempt to understand the reasons for the IRS' adjustments, correct?

MR. BURLEY: Objection, Your Honor, relevance. Again, we are not here to dispute the mechanisms by which Highland tried to institute its 2008 refund scheme and the way the IRS treated that in terms of their analysis. We're here simply to look at the results that we've seen from the IRS. And this witness is going to testify about the vast amount of uncertainty that we still have. We are not here to re-litigate why or how Highland instituted a hedging scheme that did or didn't work out in its favor. That is so far out of bounds with this witness. It has no relevance here.

THE COURT: I don't know that that's what I understood from his question. But regardless, I'm going to overrule the objection and allow the question. We're getting into what did he review and what does he understand about the

underlying IRS issue. So --

Q. You didn't attempt to understand the reasons for the IRS' adjustments; is that fair?

A. Can you be a little more specific for me? Sorry.

Q. There's nothing in your report that describes the transactions that are the subject of the IRS audit; is that fair?

A. I was not engaged to opine as to the -- the audit itself. Rather, the outcome as it relates to Mr. Daugherty.

Q. Okay. And you weren't engaged and ordered to understand the reasons for the IRS' adjustments, correct?

A. That was not part of my engagement.

Q. Okay. You're aware that the audit at issue here concerns Highland Capital Management's 2008 federal income tax return, correct?

A. Yes, sir.

Q. Except as it may relate to Highland's tax returns for 2008, you have no reason to believe that Mr. Daugherty's 2008 returns are otherwise subject to IRS review; is that fair?

A. Can you restate that for me, please, sir?

Q. So it's possible that the outcome of the dispute resolution mechanism pertaining to the Highland audit might impact Mr. Daugherty's 2008 liability; is that right?

A. You asked if it's possible? Yes, it's possible.

Q. Okay. But you're not aware of anything else that would cause and adjustment to be made to Mr. Daugherty's liability under his 2008 income tax return; is that fair?

A. I would disagree.

Q. Is Mr. Daugherty's income tax return being audited today?

A. No, sir. Not to my knowledge.

Q. Has it ever been audited, to your knowledge?

A. Not to my knowledge.

Q. Is there any aspect -- can you identify for the Court any aspect of his income tax return in 2008 that is the subject of IRS review today, other than the potential impact from the ultimate resolution of the Highland audit?

A. Outside of the IRS form 886, which specifically outlines Mr. Daugherty, then I would indicate that that document in itself would trigger the IRS.

Q. Right. But nothing other than that document. I'm saying, except for that, you're not aware of any review that the IRS was doing with respect to Mr. Daugherty; is that fair?

MR. BURLEY: Objection, Your Honor, asked and answered. He's already testified to this.

THE COURT: Overruled.

A. Can you restate that? Sorry.

Q. Sure. Other than the document that you just

mentioned, is there any other aspect of Mr. Daugherty's 2008 income tax return that you believe is the subject of the IRS' review today?

A. Not -- not that I'm aware of, no.

Q. Thank you very much.

And you have no reason to believe that the 2008 federal income tax returns for Mr. Daugherty and his wife are the subject of any ongoing IRS review or audit, correct?

A. Outside of the document that was part of the Highland Capital audit, no, sir.

Q. Okay. You're aware that the IRS field examiners completed their audit of Highland's 2008 tax returns in December 2017, correct?

A. Yes, sir.

Q. And the field examiners are IRS employees responsible for conducting audits, correct?

A. That is correct.

Q. And there was a form 4605 that reflected the IRS' final determination as to the audit, correct?

A. I don't remember the exact form, if it was a 4605 or a 4459. Typically what it's referred to is a revenue agent report.

Q. Can you go to Exhibit 15 in your binder?

A. Mr. Morris, do you want me to keep -- keep my spot on my report?

Q. Eventually, yeah.
A. Okay.
And you said 15, sir?
Q. Yes.
A. Okay. I'm there.
Q. This is the form 4605(a) that you just referred to; is that right?
A. This is a part of it.
Q. Okay. And this is dated December 8, 2017; is that right?
A. That appears to be the signature on the bottom right, yes, sir.
Q. Okay. And it's your understanding that this form reflects the IRS' final determination as to the audit, correct?
A. I'm not familiar with who did the actual field audit itself. Assuming that Linda Yao, it was the field auditor, then I would agree.
Q. Okay. And then in February 2018, do you understand that the tax matters partner informed Mr. Daugherty of the proposed adjustments flowing from the IRS' final determination?
A. I would have to look at the communications. I know there was a number of communications.
Q. Okay. Can you turn to Exhibit 16?

A. Yes, sir, I'm there.

Q. Do you understand that that's the letter from the tax matters partner, or somebody acting on behalf of the tax matters partner to Mr. Daugherty in February 2018 informing him of the outcome of the IRS audit?

A. Well, there's two parts to that question. I don't know that this is the letter. And I'm not sure as to whether Mr. Collins was representing the tax matters partner or not.

Q. Okay. But they do enclose the form, the IRS Form 886Z, correct?

A. That is correct.

Q. And if you turn to Exhibit 17. That's exactly what that document is.

A. Exhibit 17 does appear to be the Form 886Z.

Q. Okay. And if you go to the third page, the one in the lower right-hand corner ending in 31. That page sets forth MR. Daugherty's allocable share of the adjustment; is that fair?

A. That has a number there. I don't know that I agree that that is his allocable share.

Q. What do you believe his allocable share is?

A. That's -- that's part of the issue in terms of the assumptions and the speculation.

Q. Okay. So I appreciate the clarity.

That is his allocable share, though, based on the

adjustment that was set forth in the document that we just looked at that 4605(a), correct?

Do you know what, let's do it this way. Withdrawn.

If you go to Exhibit 15.

A. Yes, sir, I'm there.

Q. You'll see that the corrected amount on that document is about $170 million, correct, on (indecipherable word) 5(a)(3)?

A. It is approximately 170 million rounding, yes, sir.

Q. And is it your understanding that that is the IRS audit conclusion with respect to the proposed adjustments that are being made?

A. No, sir, I would not agree with that.

Q. Why is that?

A. Because you said proposed adjustment. The proposed adjustment would be 166 million because they did report 3 million.

Q. Okay. So they did -- so the corrected amount should be 169 in total; is that fair?

A. In total. That is the IRS' opinion, yes, sir.

Q. I appreciate the precision.

And then if you go to Exhibit 17 and you look at the document ending in Bates number 33, you'll find that exact same number that approximates $170 million, right?

A. I would agree, yes, sir.

Q. Okay. And so all that's happening on the prior page is that the IRS has applied Mr. Daugherty's partnership interest to that amount in order to yield the number that's in column 4; is that fair?

A. I believe that the IRS has indicated based off of the K-1 that Mr. Daugherty received that indicated .7403. However, again, I believe that there is quite a bit of subjectivity as to whether that is the correct percentage or not.

Q. Has anybody told you that the percentage is wrong?

A. Based off of my research, as indicated in my deposition, there appears to be difference -- differences in that -- in that ownership interest.

Q. Who -- who contends that ownership interest is incorrect?

A. That is part of my review.

Q. So you're challenging the percentage interest; is that right?

A. I'm not challenging it. I'm saying that there is question to that based off of the documents that I've reviewed.

Q. Has Mr -- to the best of your knowledge, has Mr. Daugherty ever challenged that number?

A. I believe Mr. Daugherty in my interview has indicated that he does not know whether that is a correct

amount or not.

Q. Have you looked at the partnership agreement to see if that's the number in the partnership agreement?

A. Yes, sir, I have. And that's actually why there's a discrepancy.

Q. Okay. I thought you testified in your deposition that you never looked at the partnership agreement. Am I mistaken?

A. No, sir. I think I indicated.

Q. Okay. So is the discrepancy that you're talking about between the number in the partnership agreement and the number on this document?

A. Yes, sir.

Q. Okay. Do you know what the difference between those two numbers are?

A. Well, in the partnership agreement there was a second -- a second amend to a second amendment that actually had four different percentages and then as well as an additional issuance that didn't tie to any of those four ownership interests.

Q. Let's go to that document. It's Exhibit 10.

A. Yes, sir, I'm there.

Q. Can you go to Exhibit A, which is Bates number ending 48?

A. Yes, sir, I'm there.

Q. And Mr. Daugherty's percentage is reflected at 783, correct?

A. That is correct.

Q. Okay. And if we go back to Exhibit 17, it's represented at 7.4 -- 7.7403; is that right?

A. That is correct. As well as additional percentages in the body of the agreement.

Q. Okay. So as between the two, Mr. Daugherty would be better off with the lower number; is that fair?

A. Again, there's multiple different percentages that's in this document.

Q. But that's the only one that -- that's the one -- I don't want to argue with you. It's fine.

The tax matters partner disputed the adjustments that the IRS determined after the field audit was concluded, correct?

A. That is my understanding, yes, sir.

Q. Okay. And all that's happened since the beginning of 2018 is a dispute resolution process, correct?

A. I'm not sure in terms of the date. But my understanding is is that there is a dispute resolution process currently ongoing.

Q. Okay. The IRS' determination hasn't changed, all that's happening is the tax matters dispute is being attempted to be resolved; is that fair?

A. I disagree because the IRS in the correspondence that I've reviewed, there is the dispute resolution component going on. The appeals office had indicated that they tend to lean towards the field examiner. However, that they were willing to take a second look at it. And so there are multiple -- there are multiple discussions being made in terms of what actual numbers apply. I'm not sure.

Q. Only the field examiners conduct audits, correct?

A. The field examiner is the one that conducts an audit, yes.

Q. Appeals do -- the appeals group within the IRS does not conduct audits, correct?

A. They do not conduct it. Rather they are part of the dispute resolution and can negotiate it.

Q. Okay. So the field examiner's determination has not changed as of today, correct?

A. I have not seen any evidence to indicate that, yes, sir.

Q. Okay. And there's been settlement negotiations, to the best of your knowledge; is that fair?

A. That is my understanding, yes, sir.

Q. And there's been attempts at mediation; do you understand that?

A. I recall references to settlement conferences. So if you want to say settlement conference is mediation.

Q. And then -- and then if the tax matters partner still doesn't agree, he could appeal to the IRS appeals group, right?

A. My understanding is is that he has appealed to the appeals group.

Q. And if he doesn't like that outcome, he can still go to the Tax Court, correct?

A. That is one option. There are other options.

Q. Okay. But nobody other than the field examiner conducts IRS audits, correct?

A. That is my understanding.

Q. At the time of your deposition you were not familiar with the terms of the IRS' offer; is that right?

A. That is correct.

Q. Are you familiar with the terms of the IRS' offer today?

A. I am not.

Q. You're aware that, I think you just said, right, that -- that the tax matters partner appealed the IRS' determination to the appeals unit within the IRS?

A. That is my understanding from correspondence, yes, sir.

Q. Okay. You're not offering any opinion as to the likelihood the tax matters partner will succeed on that appeal, correct?

A. I am not.

Q. In fact, handicapping the tax matters partner's likelihood of success was beyond the scope of your engagement, correct?

A. I was not asked to do that, correct.

Q. So let me just ask you a couple of hypotheticals. If you knew today that whether by agreement or final judicial determination that the amount owed by Mr. Daugherty as a result of the conclusion of the IRS audit was a million dollars and you assume that his tax rate is 40 percent, you would agree before you get to interest and penalties that Mr. Daugherty would owe $400,000; is that fair?

A. You're asking me to assume a million, assume a 40 percent tax liability?

Q. Yes.

A. Then I would -- I would say under that assumption, that it would be 400,000.

Q. And then you might add to that interest and penalties pursuant to the tax bill, correct?

A. Assuming that, again, there are a multitude of other factors as it relates to his other investments and his other tax -- his other tax income could affect the million or the 40 percent. So if you're asking me to only look at the million and not take into consideration the rest of his tax picture, then, yes, I would agree that is 40 percent.

Q. Do you know what the agreement is that Mr. Daugherty is seeking to enforce today? Do you know what the agreement is?

A. In terms of -- you're going to have to be more detailed, please, sir.

Q. Can you describe for the Court your understanding of the agreement that Mr. Daugherty is seeking to enforce today?

MR. BURLEY: I'll object, Your Honor. That's vague. I'm not even sure I understand the question. He's talking about the employment agreement and the common benefits statement, again, those are not germane to this expert witness' testimony.

THE COURT: Can you add more to your question?

Q. You're suggesting -- are you suggesting that Highland -- that as part of the agreement Highland was going to guarantee Mr. Daugherty's income tax return, even if adjustments are made based on his own personal tax attributes?

A. You asked me a hypothetical question. And what I was saying -- indicating is -- you asked me a hypothetical. And what I'm saying is is that if we are only looking at a million dollars in a vacuum, then 40 percent would apply to that million. However, there could be other factors that offset that million that then either lower that million or

change the tax rate.

Q. But none of those factors have to do with Highland's -- the audit of Highland's 2008 income tax return; is that fair?

A. Restate that for me.

Q. Whatever it is you're thinking about in your head has absolutely nothing to do with the finality of the audit of Highland's 2008 income tax return, correct?

A. It has to do with my opinion, no, not with the audit itself -- yes, not with the audit itself.

Q. Okay. Because I'm asking you to assume that as a result of the audit he's taxed with a million dollars of additional income, right? That's the assumption I'm asking you to make.

A. And given that assumption, you have to take into consideration his other -- his other personal tax issues to determine whether or not there is an offset to that million and whether or not the tax rate is increased or decreased.

Q. But those things that you're talking about right now have nothing to do with Highland's 2008 income tax audit, correct? They're about Mr. Daugherty's own personal tax attributes, correct?

A. Well, I'm confused because I feel like at one point you're asking me to exclude and only look at the audit, but then also go back to my opinion as to what the impact is on

Mr. Daugherty. And so it -- and I'm just trying to clarify that as it relates to how it impacts Mr. Daugherty, there are other factors that have to be taken into play.

Q. But those other factors relate solely to Mr. Daugherty's personal tax attributes, correct?

A. And the -- correct and the impact, the ultimate impact that the audit would have on Mr. Daugherty.

Q. But I'm telling you to assume that it's a million dollars. That's not an impact that you have to take into account. Do you understand that?

A. I -- obviously I do not.

Q. Okay. I'll try one last time. Mr. -- Highland's 2008 income tax returns are subject to a dispute resolution concerning -- as a follow up to the audit, right?

A. That is correct.

Q. And we know from the document we just looked at how much the IRS has allocated to Mr. Daugherty, correct?

A. Yes, sir.

Q. Okay. You're not aware of Mr. Daugherty's tax return being under audit today, correct?

A. That is correct.

Q. You're not aware of any reason the IRS is going to adjust anything in this tax return today, other than as it may be impacted by the outcome, the ultimate outcome of the IRS audit of Highland, correct?

A. That's where I disagree.
Q. Okay. What is it you're aware of?
A. That the impact of the audit, what it will do to Mr. Daugherty's tax picture.
Q. But the impact on the tax picture is just a factor of his own personal tax attributes, correct?
A. That is correct.
Q. Okay. Thank you.
Can we go to Exhibit 65, please?
A. Yes, sir, I'm there.
Q. Before we look at that, are you aware that Mr. Daugherty estimated his potential tax liability?
A. I don't recall that.
Q. Did you ask Mr. Daugherty if he has any thought as to what his maximum tax liability might be?
A. I have not.
Q. Do you know what a proof of claim is?
A. I do.
Q. Did you ask Mr. Daugherty to see the proof of claim that he filed in this case?
A. I did not.
Q. Okay. So let's look at 65.
THE COURT: Just real quick, Mr. Morris, how much longer are you thinking? We're right at noon.
MR. MORRIS: Yeah. I think we can -- 10 or 15

minutes.

THE COURT: Okay.

Q. You sat here -- have you reviewed this document before today?

A. Yes, sir, I have.

Q. Okay. And you heard Mr. Klos' testimony, right?

A. Yes, sir, I did.

Q. Okay.

A. Well, I stepped out for a moment to go to the restroom. But I believe that I did hear the majority of it.

Q. Do you understand that looking at this chart, the first column where it says IRS income adjustment to HCMLP, do you see that column?

A. Yes, sir, I do.

Q. You would agree that you need that information in order to estimate the ultimate -- the ultimate amount of the claim. That's a fact that you have to know, right? You have to know what the total partnership adjustment would be for Highland?

A. I would agree.

Q. And would you agree that the numbers that Mr. Klos used there in that column are all fairly represented, that the 166 is the final determination by the field audit. The 129 -- I'll just -- let me withdraw it.

Those are the numbers -- those are the numbers as he's

described them; is that fair?

A. I would disagree.

Q. In what sense?

A. I would disagree in sense of column number 4, as well as column number 3.

Q. Okay. Column Number 4 is a column that relates to the IRS offer; is that correct?

A. That -- that's what it indicates. However, the footnotes that it indicates do not specify that number.

Q. Do you have any reason to believe that numbers were wrong?

A. Do I have any reason to believe that it's wrong?

Q. Have you -- do you have your own expert opinion as to the value of the IRS coffee?

A. I have not seen any evidence. So you would be -- given the support that is indicated here, I would have to speculate. I would have to speculate that that number is correct.

Q. Okay. And then the midpoint range, that's just math, that's 50/50, right?

A. Yes, sir.

Q. Okay. So there's nothing subjective about that either, right?

A. There is nothing subjective with 50/50. It is subjective to indicate as to whether or not this is an option

that the IRS would take.

Q. Okay. That's for the judge to decide.

The next thing you would do if you wanted to estimate the claim is apply the partners' allocation for that item, correct?

A. That is correct.

Q. And Mr. Klos used .7403, correct?

A. That is correct.

Q. And that's the -- that's the number that the IRS used, correct?

A. That is the number reported on his K-1.

Q. Okay. So in reliance on the K-1, Mr. Klos just used the number that was reported -- that Mr. Daugherty gave to the IRS, correct?

A. He assumed that was the -- he assumed that percentage of partnership.

Q. So it's your understanding that he filed his tax return, included the K-1, the K-1 had that percentage in it, and he received a refund in reliance on that K-1, correct?

A. That is correct.

Q. Okay. The next thing that you would do is you would calculate the partner's share, correct?

A. In terms of taking the IRS -- the assumed IRS income adjustment and applying the assumed percentage of partnership, yes.

Q. Okay. That's just -- that's just multiplying the income adjustment times the percentage interest, right?
A. That is correct.
Q. And then you would calculate the tax affect by determining the applicable tax rate, fair?
A. You have to assume that it's 35 percent. Based off of that assumption then, yes.
Q. Okay. And in your expert opinion, is 35 the highest personal income tax rate at the time?
A. In 2008 35 percent was the highest.
Q. So this is as conservative as it can be with respect to Mr. Daugherty, correct?
A. You would have to again look at his entire tax picture to indicate that.
Q. But his -- his federal income tax at that time couldn't be higher than 35 percent, correct?
A. I don't know that I agree with that.
Q. How much higher could it be?
A. That's -- that's part of the subjectiveness.
Q. Okay. So are you aware of any federal income tax rate for personal income taxes that was in effect in 2008 that was higher than 35 percent?
A. That was the highest tax bracket.
Q. Okay. Great. Then you've got -- once you do that, you get to penalties and interest, right?

A. No. You get to the actual tax underpayment.
Q. Okay. And what is -- and is that just math?
A. That is the calculation in terms of the share -- Mr. Daugherty's share of the IRS income. And, again, this is based off my understanding of this document, Mr. Daugherty's share of the IRS income and then applying a 35 percent tax rate.
Q. So to state it another way, it's to calculate the partnership basis impact; is that fair?
A. It doesn't -- it's not calculating the basis.
Q. It's arithmetic, though, right? It's taking Mr. Daugherty's share of the income adjustment and simply multiplying it by the highest possible tax rate, that's what Mr. Klos has done here, right?
A. Yes. He's taken two assumptions and made another assumption.
Q. And you would agree that there's nothing wrong with the way he's doing that at this point, of his methodology, correct?
A. I don't -- I don't agree with the variables. In terms of the math, the arithmetic, I don't disagree.
Q. Okay. Then the next thing you do is you assess if there's any underpayment, the process stops there, right? But if there's an over -- what's the next step you would do?
A. The next step would be to determine if there's an

underpayment or an overpayment.

Q. Okay. And what happens if there's an underpayment?

A. Then you would have to look at the penalties and interest associated with that.

Q. Okay. And that's exactly what Mr. Klos has done here, correct?

A. He has assumed a statutory penalty.

Q. Okay. And do you see that -- do you know if he has relied on the right statutes in order to do that?

A. There are multiple statutes as it relates to statutory penalty. And he's relied upon one.

Q. And those statutes are 26 USC 662 and 26 USC 6651, correct?

A. It is a part of 26 USC 6662.

Q. Fair enough.

And you understand that that's what he's relying on, correct?

A. That is correct.

Q. Okay. And then -- and then the next thing you do is you compute interest, right?

A. You would compute interest, that is correct.

Q. Okay. And he has applied a statutory blended rate and came up with 4.59 percent, correct?

A. That is what he has -- that is what he has done, yes.

Q. Have you made any attempt to calculate the interest rate that would be applicable?

A. I have reviewed the documents that were provided along with this document. And I have not taken the step to calculate the blended rate as much as the accrued interest.

Q. Okay. But, again, you know exactly what statutes to look at in order to do that, right, it's 26 USC Section 6601 and 6621, correct?

A. That is a potential statute.

Q. Okay. And then the last step, let's put aside line K. The last step would be to simply add up the tax underpayment, the statutory penalties, and the interest that's owed, correct?

A. No, sir. You've got to determine how long.

Q. Good point. That's the 10 years, 10 1/2 years that's there?

A. Yes. He has assumed 10 1/2 years.

Q. Okay. And you're not a bankruptcy lawyer, right?

A. I am not.

Q. And so for purposes of estimating Mr. Daugherty's claim against Highland, you're not offering any opinion as to whether Mr. Daugherty as a general unsecured creditor would be entitled to post-petition interest, correct?

A. Well, my opinion is is that that is an option and another variable that needs to be considered in determining

estimation.

Q. What is your basis for your opinion that the Court can award post-petition interest on a general unsecured claim?

MR. BURLEY: Objection, Your Honor. Mischaracterizes the testimony. He didn't testify that he thinks that's something the Court could or should do. He's talking about the impact on Mr. Daugherty. He's not talking about Bankruptcy Code provisions related to the post-petition interest availability or not. That mischaracterizes what this witness said. We've already said and stipulated that he's not a bankruptcy expert and he's not testifying about that.

THE COURT: Well, I believe his testimony was is that he's not certain as to whether or not Mr. Daugherty would be entitled to interest.

THE WITNESS: Correct.

THE COURT: And the question that was asked is what is your basis for that? So I'm going to overrule the objection. And to the extent you know the answer, you can answer the question.

A. My understanding is is that that is a question of law. And that that is another variable that has to be determined.

Q. So it's a variable for you, but it may not be for

the judge; is that fair?

A. Well, I believe that if that is a variable, that he would then consider. But I will leave that up to Your Honor.

Q. Okay. Can you go back to your Exhibit 59?

A. Yes, sir, I'm there.

Q. Okay. Can you go to page 11 of 15?

A. Yes, sir, I'm there.

Q. You provide a methodology for estimating Mr. Daugherty's claim against Highland, correct?

A. That is correct.

Q. And that is the exact methodology that Mr. Klos used in Exhibit 65, correct?

A. With -- with various assumptions, yes, that is the mathematical equation he utilized.

Q. And if you look at footnote 39, that is a footnote that relates to penalties, correct?

A. That is correct.

Q. And it refers to portions of the US Code, correct?

A. That is correct.

Q. Have you looked to see whether the exhibits Mr. Daugherty -- Mr. Klos relied on are the same as the documents that you're citing to in your own footnote for the determination of penalties?

A. Mr. Klos, as indicated, that statute has multiple different components to it with multiple different interest

rate, or penalty and interest. And he has applied one that -- of, I believe three that's inside of that statute.

Q. Okay. So which one do you think -- which one did he apply and which one do you think should apply?

A. He -- I'm not opining as to which one should apply because it depends on the variables associated with the equation.

Q. Okay. So you will admit that Mr. Klos is relying on the exact same statutes that you have cited in your own expert report in order to assess penalties, correct?

A. I will admit that he has taken one portion, not the entirety of the statute.

Q. Is there any portion of the statute that would result in the imposition of penalties that are higher than what Mr. Klos has put in his analysis?

A. Yes, sir.

Q. How much higher would it be?

A. I would have to look. I believe it's 3 percent.

Q. Okay. So instead of 20 percent, you think maybe it would be 23 percent?

A. No, no, no. My apologies, it's 30.

Q. 30 percent. And is that just for scenario five?

A. That is actually 30 percent is for what is deemed a reported transaction.

Q. Okay. Any other -- any other opinions you want to

share with the Court as to Mr. Klos' analysis?

A. Again, there are a multitude in terms of --

Q. I'm sorry to cut you off. I want to know every multitude that you're aware of. I want -- I want the Court to have all of the options here. If you disagree with Mr. Klos and his calculation of the penalty, even though he's relying on the same statute, would you please tell the judge what you think the penalty ought to be?

MR. BURLEY: Your Honor, I'd just object to the question, it's misleading. I want to kind of reframe and reset what we're doing here which is, Mr. Morris is using a demonstrative that was only recently provided to counsel that this witness has only had a few days to analyze and look at. This is not a substantive report or position of Highland in the substance, the duration of this case that this witness has had a fair availability to look at and prepare counter opinions on. It was not provided when he was deposed. It was not provided by the time he issued his report. It was not provided until I believe the end of last week. So my point there, Judge, if you want to take this line of questioning under advisement, you're of course entitled to.

But -- Mr. Morris, I'm sorry? I didn't know if he was chiming in.

My point simply is, Your Honor, this witness has not had this demonstrative to prepare in response in substance

to, because it's a demonstrative. That's kind of the whole point here. Mr. Klos is entitled to do it. We've not objected to it on that basis. But the notion that he can poke holes in my witness' potential lack of knowledge about something that he's detailed but only recently provided is inherently unfair.

MR. MORRIS: May I respond, Your Honor?

We disclosed Mr. Klos on our witness list, I don't know when. I personally expected them to depose him. I don't know why they didn't ask for that. But be that as it may, I think if you just look at the expert's report at pages 11 and 12, I think he has already acknowledged for you that Mr. Klos has applied the exact same methodology for estimating the claim that he did. All we're arguing now, to the extent there is an argument because they've relied on the exact same statutes for the calculation of penalties, they relied on the exact same statutes for the calculation of interest, is the witness is contending that maybe there was a different piece of the Code that would have resulted in a higher amount. And I don't care. I mean, I don't need to be right here. I want you to have the best information to do what I think is required under the law and that is estimate the claim. And if Mr. Klos has used 20 percent in the statute, the same statute that he uses but he thinks the number should be used is 30 percent, you decide if 20 percent or 30 percent is

right. I don't care. I don't care. I just want you to have the best information.

What I don't want is for them to say later on, oh, my God, there's so much uncertainty here. There's so much -- there's no -- there's virtually no uncertainty. Is it 7.03 that's in the K-1 or is it 7.38 that's --

THE COURT: Mr. Morris, I think you've gone beyond responding to the objection.

Okay. I'm going to overrule the objection. What I hear the question to be is his question -- he's questioning the witness based on the statutes that are being referenced for purposes of penalty what variables, or in what ways would they be different? He's not asking him to opine as to this calculation. He's asking, if you don't agree with this, what are the variables, or what are the rates that could be applicable based on the statute? That's what I hear the question --

MR. MORRIS: It's really that simple.

THE COURT: And so to the extent that you can answer that question, which you've somewhat already answered saying it could be as high as 30, please answer the question.

A. To answer the Court's clarification of it, you would have to look at the transaction itself. If it is a reported transaction under the -- if the IRS considers it a reported transaction, it could be 30 percent. If the IRS

considers it a simple underpayment, then it could be 20 percent. If they consider it to be a failure to pay, that has a percentage. All of those different components fall under the statute 6662.

Q. Do you have an opinion as to which one applies here?

MR. BURLEY: Objection, Your Honor. That's exactly what we just spoke about. This witness has said that this is the general basis. He doesn't have an opinion on that question --

MR. MORRIS: Great.

MR. BURLEY: Mr. Morris, please let me finish.

THE COURT: Please let him say his objection.

MR. BURLEY: Thank you, Your Honor.

That's the exact position we have here is that he was not tasked with doing the math himself. You can see that in our report. He was tasked with analyzing the situation and the lack of variables and the lack of clarity. So he's already answered Your Honor's question which is, give me a general framework for what's applicable here, potentially applicable here. And then Mr. Morris asked the question that you said is arguably impermissible, which is, and how does it apply? That's not fair here.

And I will also say to Mr. Morris' prior speaking objection, he might have disclosed Mr. Klos as a witness. He

certainly did not disclose this demonstrative at the time of that disclosure. So that's an inherently unfair way to characterize that disclosure.

THE COURT: All right. I don't want a response.

I'm going to overrule the objection. He asked whether he has an opinion. If he doesn't have an opinion, he can state whether he does or doesn't.

Q. Do you have a view as to what the maximum penalty?

A. Not at the time, no, sir.

Q. Okay. How about with respect to interest? Mr. Klos used 4.59 percent. Have you made any attempt to calculate the interest rate that would be applicable?

A. I have not.

Q. Okay. You do understand that Mr. Klos relied on the exact same statutes that you've cited in your report, correct?

A. General, broadly, yes, sir.

Q. Okay. You don't -- he cited to the right statutes in your opinion, correct?

A. He cited -- yes, I would agree.

Q. Okay.

MR. MORRIS: I've got nothing further, Your Honor.

THE COURT: All right. We're at 12:15. We're

going to take, I don't want to give us too short a time. We're going to take an hour recess for lunch. We're back at 1:15.

MR. MORRIS: Thank you, Your Honor.

(Lunch recess ensued.)

THE COURT: All right. Mr. Liles Tim if you'll go ahead -- did I say your name, right?

THE WITNESS: Liles-Tims.

THE COURT: Liles-Tims, okay, I apologize. Mr. Liles-Tims, if you'll go ahead and take the stand. And, again, you're still under oath, sir.

THE WITNESS: Yes, sir.

THE COURT: Give me just one moment while I pull up my notes.

MR. BURLEY: Of course.

FEMALE SPEAKER: Judge, I have defendant's binders here, if you'd like them.

THE COURT: That will be fine.

MR. BURLEY: Judge, for my direct, we're putting the exhibits up on the screen.

THE COURT: Okay.

MR. BURLEY: So ideally you can avoid having to rummage through.

THE COURT: All right. You may proceed.

MR. BURLEY: Thank you, Your Honor. Again,

Reid Burley with Gray Reed.

DIRECT EXAMINATION

BY MR. BURLEY:

Q. Mr. Liles-Tims, could you formally introduce yourself to the Court, please.

A. Sure. My name is Trevor Jason Liles-Tims. I go by T.J.

Q. And what is your current position and where are you employed?

A. I'm employed at Weaver & Tidwell LLP, which is a certified public accounting firm. And I am a partner at the firm.

Q. And can you generally describe to the Court the types of services that Weaver provides?

A. It provides tax services, as well as audit -- audit functions and a multitude of advisory functions, as well.

Q. What are your areas of expertise at Weaver?

A. Sure. So my areas of expertise are business valuation, as well as quantification of personal economic damages, as well as fraud examination.

Q. Can you describe to the Court briefly your educational background, degrees, certifications you have?

A. Sure. So I attended Cornell University. Ultimately got my bachelors in finance from the University of Central Oklahoma. And I got my masters degree from the

University of Central Oklahoma in 2007. I also hold the Certified Valuation Analyst credential under the -- that is issued by the National Association of Certified Valuators & Analysts. I hold the Certified Fraud Examiner credential that's issued by the Association of Certified Fraud Examiners. And I also hold the Master Analyst in Financial Forensics credential that is issued by the National Association of Certified Valuators & Analysts.

Q. How long have you been doing this type of work?

A. I have been doing this line of work approximately 23 years.

Q. Okay. And have you previously been qualified as an expert in federal court proceedings?

A. I have.

Q. In state court proceedings?

A. Yes, sir.

Q. Arbitration proceedings?

A. Yes, sir.

Q. Okay. And have you authored or coauthored publications in your line of work?

A. Yes, sir, I have.

Q. Can you just generally -- I know they're a little bit voluminous. Can you just give the Court a picture of what you've done in that regard?

A. Sure. So one of the designations that I indicated

that I have is the Master Analyst in Financial Forensics. I am one of the coauthors of the curriculum for that credential. I also teach for that credential. I teach fraud examination at the University of Central -- sorry, no longer. I used to teach at the University of Central Oklahoma. I now teach fraud examination at Oklahoma City University. And I do various teaching courses for the National Association of Certified Valuators & Analysts.

Q. Great. And in all of the work that you've done in those roles you have, do you deal with IRS matters in that line of work?

A. Yes, sir.

Q. Okay. Can you elaborate to the Court on your experience with IRS matters and related tax issues?

A. Sure. So one -- in fact, my very first federal court case was an IRS tax matter where an individual was a bookie and accused of not reporting income. And it was a forensic accounting in terms of challenging the audit as it relates to what income was, in fact, reported. I have also, I deal with tax returns and the IRS for estate tax matters, gift tax matters, charitable contribution matters. I'm familiar with the audit process as it relates to that. I actually got permission to indicate this, that I am -- I have been actually retained by the IRS in audit matters in terms of calculating differences between the taxpayer and the IRS.

Q. That's great.

And Mr. Liles-Tims, you testified earlier you're not a CPA. Did someone else that works with you at Weaver, one of your colleagues, coauthor and review this report with you in this case?

A. Yes, sir, he did.

Q. Okay. Who is that?

A. His name is Gary McIntosh.

Q. Do you work with Mr. McIntosh regularly?

A. Yes. Mr. McIntosh is actually a managing director for Weaver & Tidwell. And I want to give Mr. McIntosh his credit. Mr. McIntosh has put in 50 years in the profession. And due to our partnership agreement, he can no longer be a partner. And that's the only reason he's not a partner and is a managing director.

Q. Thank you.

And he's a CPA, correct?

A. He is a -- he holds the certified public accountant as well as certified in financial forensics.

Q. Okay. And did he confirm to you the conclusions laid out in your report?

You can answer.

A. Mr. McIntosh and I did --

MR. MORRIS: Objection; hearsay. This is not right. He's not here testifying. It's not right. Hearsay.

THE COURT: He asked -- well, do you want to rephrase the question, or --

MR. BURLEY: I can. I'm not sure if I need to, but I can. I can reask it.

THE COURT: Well, why don't you rephrase the question.

MR. BURLEY: Okay.

Q. Mr. Liles-Tims, did Mr. McIntosh review your report in this matter?

A. Yes, sir, he did.

Q. Did he approve it?

A. Yes, sir.

Q. Including the conclusions you came to?

A. Yes, sir.

Q. Okay. Thank you.

Mr. Liles-Tims, who retained you in this matter and on whose behalf?

A. I always get confused on this. Mr. Daugherty retained me and Gray Reed contacted me.

Q. Okay. And what were you asked to do in connection with this case, generally speaking?

A. To review the audit that is being conducted by Highland -- or by the IRS for Highland Capital. And determine whether or not the outcome or the impact of that audit can be determined on Mr. Daugherty's behalf.

Q. Okay. And did you prepare a written expert report in this case?

A. Yes, sir, I did.

Q. Okay.

MR. BURLEY: Laura, if we could turn to Defendant's Exhibit 82, please.

Q. Just let me know once you've gotten there.

A. Yes, sir, I'm there.

Q. Okay. And is this the report that you prepared for this case?

A. Yes, sir, it is.

Q. Okay. Who assisted you in preparing this report?

A. A gentleman by the name of Mr. Logan Woods.

Q. Okay. And what is his role with Weaver?

A. Mr. Logan Woods is my senior manager.

Q. Okay. And is that in addition to Mr. McIntosh's, you know, work on this report that you talked about earlier?

A. Yes. Both individuals worked under my direction. Mr. McIntosh reviewed the report and agreed with the opinions. And Mr. Woods assisted in drafting the report.

Q. Okay. And what's your hourly billing rate for the services you're providing in this matter?

A. I believe its 595 an hour.

Q. Okay. And is your compensation in any way contingent upon the outcome here today?

A. No, sir.

Q. Okay. Generally speaking, what documents and information did you review as you prepared that report?

A. Generally speaking, and as Mr. Morris pointed out on page 1 of 1, very last page of my report are all of the documents reviewed. However, generally speaking, I reviewed correspondence between the IRS and the tax matters partner. I reviewed the partnership agreement, amendments thereto. I reviewed, you know, various emails, various hearing transcripts, and various other documents.

Q. Looking now at your report --

MR. BURLEY: And, Your Honor, I'll mention that Defense Exhibit 82 has been pre-admitted in this case over no objection. So this is in evidence already.

Q. Mr. Liles-Tims, let's go to your first opinion in this case. Can you tell the Court generally what that first opinion of your's is?

A. Yes, sir. So that first opinion would be on page 7 of 15 on my report. And basically the first opinion is an opinion as to the professional standards that someone that holds the credential of the certified fraud examiner, as well as a master analyst in financial forensics has to adhere by in terms of relevant, reliability, reasonable certainty, and then also discusses how those professional standards also come into play and are basically dictated by Federal Rules of

Evidence 702.

Q. Okay. And although you're not a lawyer, you're aware of and familiar with the requirements of providing expert testimony in cases, correct?

A. Yes.

Q. Okay. Let's go to your second opinion there, your first substantive opinion, I may add. I think it's a couple of pages later.

A. It's actually page 8 of --

Q. Opinion number two.

A. -- 8 of 15.

Q. Okay. Thank you.

Okay. Mr. Liles-Tims, can you tell the Court generally what your opinion number two is, which is your first substantive opinion in your report?

A. Sure. So opinion two is effectively that the IRS audit process has not been finalized. And based off of the correspondence that I have seen, there does not appear to be a conclusion in the near future.

Q. Okay. And let's talk about that term a little bit. What is your understanding, from your expertise, as to the term, final determination when it comes to IRS audits and related disputes?

A. Sure. So final determination is not a term -- is not, you know, a defined term. You know, a taxpayer may

consider the final determination to be once they have a judicial remedy, whether that's to pay a refund, file in federal court to get that refund. It may be a situation where they file in tax court and the Tax Court then render an opinion, the Federal Court render an opinion. The IRS could consider their final determination to be, you know, a field examination, to the extent that that's what they stick with. It could be once they've determined their opinion, once it goes through the appellate process. So final determination is really dependent on who's asking the -- who you're asking the question of.

Q. Gotcha.

Did you review the settlement agreement between Mr. Daugherty and Highland in this case?

A. Yes, sir, I did.

Q. Do you remember that including the language, final determination --

A. I --

Q. -- generally speaking? I'll pull it up shortly.

A. Generally speaking, yes, sir.

Q. Okay.

MR. BURLEY: Ms. DeBerg, if you could go to Plaintiff's 5, please.

Q. Okay. Are you there?

A. Yes, sir, I am.

Q. Is this the settlement agreement that you reviewed in this case?

A. Yes, sir.

Q. Okay.

MR. BURLEY: Your Honor, this is Plaintiff's Exhibit 5. It's been pre-admitted in this case.

Ms. DeBerg, if you could go to page 12 of this exhibit, please.

Q. Okay. Mr. Liles -- are you there, Mr. Liles-Tims? Or do you have it on your screen, as well?

A. I've got it both, hard copy and electronic.

Q. Okay. Got it all covered.

If you look at that top paragraph, which is a continuation of what appears to be paragraph 9, do you see the second full sentence beginning on that page with, Any litigation by and between?

A. Yes, sir.

Q. Okay. And it states, Any litigation by and between the debtor and Daugherty concerning the validity and amount of the reserve claim shall be stayed until the IRS makes a final determination with respect to the IRS audit dispute. Do you see that?

A. Yes, sir, I do.

Q. Okay. And final determination is not capitalized, but is IRS audit dispute, does that appear to be a

capitalized term?

MR. MORRIS: Your Honor, I object to this line of questioning. It's completely irrelevant to whether or not the claim should be allowed or estimated. What they're trying to do here is to revisit the issue that was the subject of their motion to dismiss last fall. And that is whether or not this matter should have been stayed. The Court addressed that issue last fall. Denied the motion to dismiss. That motion to dismiss denial was not appealed. The only thing that was appealed was the Rule 60 order. And I object to any questioning on a document that is not really the subject of any particular opinion they're trying to get in today. I don't even know why, because the case -- because the issue's over. But we're going to waste time now trying to buttress an argument that was rejected by the Court last fall.

MR. BURLEY: If I may?

THE COURT: You may respond.

MR. BURLEY: Your Honor, I'm just getting into what Mr. Morris got into with the witness, which was a relatively lengthy examination regarding when the IRS concluded, is it final, you know, you heard him talk about the field examiner. They've done what they've needed to do. All of that goes to this usage of final determination and the ongoing dispute between the parties. I only have a few more

lines of questions here. But it's directly on point and specifically in response to lines of questioning from Mr. Morris.

THE COURT: Okay. The Court will weigh whether this line of questioning and testimony is relevant to the matters. So the Court's going to overrule the objection.

MR. BURLEY: Thank you, Judge.

Q. Mr. Liles-Tims, if you could flip one page prior to page 11. We'll look at that defined term, IRS audit dispute.

A. Yes, sir, I see it.

Q. Okay. At the bottom of page 11 you see that there?

A. Yes, sir.

Q. And can you read out loud to the Court what is meant by IRS audit dispute in that parenthetical?

A. Do you want me to read the whole sentence, or just the --

Q. No, just the parenthetical that defines IRS audit dispute.

A. Okay. The dispute between the debtor and IRS being referred to herein -- herein as IRS audit dispute.

Q. Okay. So the dispute between the debtor and the IRS. Based on what you've reviewed in this case, is there still an ongoing dispute between the debtor and the IRS?

A. Yes, sir.

Q. Okay. Let's walk through just a few more of those.

Let's look now at Defendant's Exhibit 32.

THE COURT: Is this Defendant's 32 or Plaintiff's?

MR. BURLEY: Defendant's 32, Your Honor.

Q. Are you there?

A. Yes, sir.

Q. Thank you.

I'm showing you what's been marked as Defendant's Exhibit 32. This is a December 9th, 2019 email from Brian Collins at Highland to Mr. Daugherty. Do you see that?

A. Yes, sir.

Q. And do you see the third paragraph -- well, I should say -- let me start with the first paragraph. That last sentence, could you read that out loud, please, the by letter dated December 8th.

A. By letter dated December 8th, 2017, Exam indicated that they had concluded their audit and provided a summary report proposing certain adjustments to the 2008 return.

Q. Okay. And then if you look at the third paragraph beginning with Highland, that states that Highland will continue to defend against the proposed adjustments and prosecute the appeal. Do you see that?

A. Yes, sir.

Q. Okay. So based on -- and was this an exhibit that you reviewed in your report?

A. Yes.
Q. Or in conjunction with preparing your report?
A. Yes, sir.
Q. And based on your review of this, do you believe that the dispute between the IRS and the debtor is ongoing?
A. As of December 9th, 2019, yes.
Q. Okay.
MR. BURLEY: Ms. DeBerg, if you could now go to Defendant's Exhibit 17. And unfortunately I think that's another different one.
A. Yes, sir, I'm there.
Q. Okay. This is the February 28th, 2025 letter from Hunton, the law firm, to the IRS. Do you see that?
A. Yes, sir.
Q. Okay. And is it your understanding that Hunton represents Highland's tax matters partner in regards to their IRS dispute?
MR. MORRIS: Objection, Your Honor. I just want to clarify. It's not Highland's tax matter partner. It's the tax matters partner who's overseeing the return, but they have nothing to do with Highland today. I just want to make that clear. I hope there's not -- because I heard the word, debtor, before. This is not -- this is not our's any more. That's why we're not involved. That's why we have no knowledge of what's happening today. The tax matters

partner.

THE COURT: I mean is that your understanding?

MR. BURLEY: Yeah. I mean, it's the tax matters partner, correct me if I'm wrong, that is in charge of managing, resolving the audit of Highland. But, yes, my understanding is that Highland, as they sit here today, don't have direct involvement with the tax matters partner. If that's what he's getting at. I understand that.

MR. MORRIS: It's not just direct. It's not indirect. It's not anything. This has nothing to do with reorganized Highland Capital Management.

THE COURT: Okay.

MR. BURLEY: Fair. We'll continue.

THE COURT: You all can't testify. He has to testify. So if you want to ask questions that gets him to testify that he understands that, or if he doesn't, that's fine. But the Court will take the evidence and gather its understanding from the testimony of the witnesses.

MR. BURLEY: Of course. Thank you, Judge.

Q. Mr. Liles-Tims, do you have an understanding as to whether Hunton represents the tax matters partner that is involved in this audit dispute?

A. That is my understanding.

Q. Okay. And this letter, again, February 28th, 2025, based on your review of this -- strike that. Let me ask you,

was this exhibit part of your review in preparing your report?

A. I recall the letter. I don't recall the power of attorney that's attached to it.

Q. Okay.

A. But I do recall the letter.

Q. Okay. And based on your review of the letter, do you believe that the dispute between the IRS and Highland has concluded or not?

A. Based on my read of the letter, it has not concluded.

Q. Okay. And this letter, again, February 2025, is this the latest correspondence or information that you have in your possession related to this dispute?

A. I believe so. There was a new letter that was attached to Mr. Klos' and I don't recall the date of that letter. But I do believe this is the last one.

Q. For that letter that you're referring to, do you recall if it indicated there had been a resolution of the dispute or not?

A. No. There -- no, to the contrary.

Q. Okay. Mr. Liles-Tims, switching gears briefly we've talked a lot and you've already been examined about what materials are at issue here with regard to the IRS dispute. And switching gears to Mr. Daugherty as a taxpayer

and a profits interest partner of Highland, in your opinion what is the information that Mr. Daugherty would need to be able to understand his tax picture as it relates to this audit dispute?

A. Sure. It goes back to the question about final determination in terms of, you know, the taxpayer. So what Mr. Daugherty would need is a letter from the tax matters partner indicating this matter has been finalized. Here is your final K-1 that you now need to amend your return, or not, or it would be the outcome from the judicial venue of either the Tax Court or Federal Court.

Q. And in addition to the -- excuse me. In addition to the K-1, is there anything else that Mr. Daugherty as a taxpayer could or, I should say would need to determine that final picture for himself? Are there other forums out there that would give him clarity?

A. No. He would need -- he would need an amended K-1.

Q. Okay. What about the Form 886, how does that have an interplay here?

A. The Form 886 is not generally provided to the taxpayer. That is a tax matter partner issue. And so that's handled more at the partnership level than the partner level.

Q. Gotcha.

Have you seen anything in this case regarding what you just testified to that would give Mr. Daugherty that clarity

as to his tax picture?

A. No, sir, to the contrary in terms of the correspondence that was provided that this matter is ongoing.

Q. Okay. Are you -- and I know that you are not Mr. Daugherty. Are you aware of him, or have you reviewed any documents that would show that he's received confirmation from the IRS that the disputes been resolved?

A. I am not aware of any such, no.

Q. Okay. And given that absence of a final determination between the parties, is it your opinion that any expert can reasonably opine on the outcomes here?

MR. MORRIS: Your Honor, he's really leading the witness here. So I object on leading grounds. The answer, all he's going to do is give yes or no answers to these kinds of questions. He's asking him basically a leading question.

MR. BURLEY: Your Honor, yes or no is an open-ended question, it's either yes or no. It's not leading.

THE COURT: Yeah. I'm going to overrule the objection. I don't believe the question was leading.

Q. Mr. Liles-Tims, let's move on to your second opinion which dovetails a lot with Mr. Morris' cross of you which is the process of calculating these, you know, the estimation, the damages, however you want to call it.

What is your general opinion about that process and the ability for someone like Mr. Daugherty to accurately calculate his liability? Just generally speaking.

A. Generally speaking the process of an audit is the issuance of a tax return. Then the IRS questioning that tax return, at which point then a field examiner is assigned. There's correspondence that goes back and forth between the taxpayer and the field examiner. The field examiner will then issue generally what is referred to as a revenue agent report, an RAR. And then from that standpoint the taxpayer then has the ability to accept. They have the ability to negotiate with the field examiner. And if unsuccessful, then it goes to the appeals. Then the appellate process or the appeals process is a much more lengthy process at which point then the appeals can say, we are standing firm with the field examination, or they can modify through negotiation a different stance at which point if -- if that's their final stance, the taxpayer then has the option to actually pay that amount, file for a refund or whatever in federal court, or have the ability to take -- take the matter to tax court.

Q. And I believe that process that you're describing, which is on page 9 of 15 of your report, where in that process, in that flow chart is it your opinion that Mr. Daugherty and Highland's audit dispute is currently at?

A. It currently is at the settlement or the settlement

negotiation standpoint which then at times goes -- reverts back to what's referred to here as a closing conference. But in essence it's a settlement conference. And so there negotiations just go back and forth in terms of the settlement.

Q. Thank you.

Let's -- let's turn now to Highland's demonstrative, which is their Exhibit 65.

MR. BURLEY: Ms. DeBerg, if you could just put that up on the screen.

Q. I probably could have just given you an extra copy.

A. Now I've got to flip all of the pages back over.

Q. I know. I'm sorry. Too many papers.

MR. BURLEY: And, Your Honor, we're going to be flipping back to some other exhibits, as well. But if you'd like, I have a hard copy of the demonstrative if you need it.

THE COURT: I'm okay. Thank you.

Q. Mr. Liles-Tims, were you -- have you been able to review this demonstrative just in the past week or so?

A. Yes, sir.

Q. Okay. Was this demonstrative available to you when you were deposed in the case?

A. It was not.

Q. Okay. Was it available to you when you created

your report in this case?

A. It was not.

Q. Okay. Was it available to you when you created your report in this case?

A. It was not.

Q. Okay. Let's look at some of this. I know you walked through this with Mr. Morris. Going first to line B, row B, which is Mr. Daugherty's percentage of the partnership.

MR. BURLEY: Ms. DeBerg, can we please turn to Plaintiff's Exhibit 17, please?

Q. And, Mr. Liles-Tims, I think we can just leave that on the screen maybe, that way we can hopefully move a little bit more quickly.

A. Okay.

MR. BURLEY: If you could go, I think, to the next page, Ms. DeBerg.

Q. Mr. Liles-Tims, based on your review, is this where the allocated partnership interest for Mr. Daugherty on the demonstrative comes from?

A. I believe -- I recall Mr. Klos' testimony was that it was from here, as well as the K-1.

Q. Okay. And this Form 886 and that K-1, like we talked about, have those or have those not been finalized between the parties at dispute here?

A. I don't believe -- I do not believe that they have been finalized.

Q. Okay.

MR. BURLEY: Ms. DeBerg, if you could go to Plaintiff's 8, please.

Q. And I think it's page 54, which is Bates 4319 at the bottom. This is the second and amended restated partnership agreement.

MR. BURLEY: Thank you. That's great.

Q. Mr. Liles-Tims, like I said, this is the second amended and restated partnership agreement between the relevant parties. What is that percentage that's allocated to Mr. Daugherty there?

A. .608.

Q. Okay.

MR. MORRIS: What exhibit is this?

MR. BURLEY: This is Plaintiff's Exhibit 8.

And, Ms. DeBerg, if you can now go to Plaintiff's 10, please.

Q. And, Mr. Liles-Tims, earlier you, I believe, spoke briefly about the fact that you had reviewed this, which is a second amendment to the second amended and restated. Do you recall that?

A. I do.

Q. Okay.

MR. BURLEY: Ms. DeBerg, can you please turn to page 7 of this one which, again, is Plaintiff's Exhibit 10? Thank you.

Q. And, Mr. Liles-Tims, on this one, which is the live version of the partnership agreement, what allocated interest does that have for Mr. Daugherty there?

A. .783.

Q. Okay. Are either of those numbers what are indicated in the demonstrative?

A. They were not.

Q. Okay. Let's go back to the demonstrative exhibit. We'll go down to the next rows.

MR. BURLEY: Okay. Thank you, Ms. DeBerg.

Q. If we could look at row D, Mr. Liles-Tims. Could you just please tell the Court generally your opinion on the usage of 35 percent as an estimated tax rate?

A. So 35 percent is the highest tax rate paid. However, there are other tax brackets, as well as this is -- this is the assumption of ordinary income tax and it's not -- it is not applicable to long-term capital gains, short-term capital gains, portfolio income. So those in itself have various tax rates, as well.

Q. And would it also not include things like ownerships of other entities, membership interest, et cetera, or would this include that?

A. Well, it would depend. Because the K-1 has -- so I believe the K-1 has approximately 21, 22 boxes that have various different income and expense categories. And so it would depend on how that income flows through on the K-1 to determine which is applicable.

Q. Okay. But your testimony is that it would depend?

A. That is correct.

Q. Okay. Looking at row F, which is statutory penalty, I don't need to belabor this, but you were examined about it earlier. Could you please tell the Court your opinion of the usages of 10 and 20 percent as the -- I should say also add 0, as the only estimated penalty numbers on this demonstrative?

A. Well, according to the 26 IRC 6662, the amounts that are shown are 20 percent and 30 percent. I reviewed and did not see a 10 percent. I believe I recall Mr. Klos saying that the 10 percent was based off of a -- off of a 50 percent. I forgot the term used in the latter, but essentially a 50 percent negotiation.

Q. So in your opinion the penalty rates, the statutory penalty rates that are included on this demonstrative, do those encompass all potential penalty numbers?

A. They do not.

Q. Okay. Let's look down at row G, which is the applicable blended rate. And that is footnoted or endnoted

as sub (3), which is defined on the next page.

Mr. Liles-Tims, in regards to that blended rate, could you give the Court your opinion on the validity of using an averaged out number like this demonstrative has done?

A. Sure. So utilizing a blended rate whenever you are calculating compounded daily interest is highly inappropriate because it does not take into account that compounding. And so what you would have to do is literally you would have to calculate that number out due to a -- because as indicated by the footnote, that is a figure that is determined quarterly. And that number is then compounded daily.

Q. And although this demonstrative purports to cite to those provisions of the Code, you know, dictating you use the prime rate, do those provisions of the Code, in your opinion, tell you how to make this calculation in terms of compounding daily updated quarterly?

A. No. It -- rather what it does is it says this number is provided quarterly and should be compounded daily.

Q. Okay. But it doesn't do the math for you, the provisions of the Code?

A. No. It gives that -- the narrative that I just testified to as well as the rates themselves.

Q. Okay. And then in the time outstanding on years, I won't belabor that one. But you've testified earlier that -- and I believe that the Court's already heard testimony that

this is based on leading up to the petition date of Highland. Do you recall that?

A. I do.

Q. And in your opinion does their usage of 10.51 across the board in row H, does that cover all possible scenarios here?

A. I believe that that is a question for this Court as to where that stops.

Q. And, Mr. Liles-Tims, the final column -- I should say the second to row there, row K, which is income on previous refund, what is your understanding of what they've attempted to do with that row?

A. It is my understanding that they have tried to attempt to look and mitigate what the penalties and interest are by what the potential usage of those funds that Mr. Daugherty had the option of.

Q. And based on your experience in finance, do you believe that that's a fair assumption as to someone's usage of money over time?

A. I believe that you have to conduct a very thorough investigation to mitigate what we call in the industry to mitigate damages is in itself a calculation that you would have to look at multitude of different factors.

Q. Do you believe that this demonstrative is that very thorough analysis you're speaking of?

A. I do not.

Q. Okay. Mr. Liles-Tims, in conclusion, what is your opinion to the Court as to whether it is reasonable for an expert to opine on the outcomes of this demonstrative as we see here?

A. I don't believe that it fairly represents it. One of the -- the item that stuck out at first with this is a very simple finance 101 calculation of what we refer to as the Rule of 72. And that indicates that the Rule of 72 is you take 72 divide it by an interest rate, and that will tell you the number of years that it takes to double that money. And so in this calculation under I, the interest accrued, for instance, the first -- the first number -- first column with a number in it is a column 3. It indicates $103,860. And what's trying to be calculated here is what are the penalties and interest on the $215,488. But if you take that finance 101 calculation and you take 72 divided by 4.59, indicates that it would take 15 years to double that. Under this calculation that's 10 1/2 years. So that $103,860 should be very close to $430,000, or double that $215,000 number. And so what it appears, again, I have not had it very long. It appears what they've done is made an error in the calculation in trying to determine net present value, which is not appropriate in this situation. Rather what you're trying to do is determine a future value. And so I believe that it

significantly underestimates the interest accruing.

Q. Okay. And that number that you're pulling out of there to opine on, that's in column 3. I think you said they would go from 103 to in the 400s. That same extrapolation would occur and increase the numbers in columns 4 and 5, as well; is that correct?

A. That is correct.

Q. Okay.

MR. BURLEY: Your Honor, I'll pass the witness at this time.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q. Let's go through this one more time.

You have the demonstrative there?

A. Yes, sir. Do you mind if I -- if I use this one?

Q. Sure. Sure.

A. Okay.

Q. You talked about the Daugherty's percentage of partnership interest, correct?

A. I recall that line of questioning, yes, sir.

Q. Okay. And you understand that Mr. Klos relied on the K-1 that Mr. Daugherty gave to the IRS to receive his refund, correct?

A. That is correct.

Q. And Mr. Klos relied upon the document that the IRS

gave the, what is it the 886?

A. Can you restate that for me? Sorry.

Q. The other document that also had the 7.403 percentage was a document that we looked at from the IRS.

A. The 886Z, yes, sir.

Q. Right. So you were asked a couple of questions about the partnership agreements, right, and you were asked about Exhibit 8. Do you remember that?

A. I recall being asked. I don't specifically recall Exhibit 8.

Q. Okay. That was the partnership agreement from 2004. It was amended and it's not relevant after it gets amended, correct?

A. Is that the nonamended one, because we looked at two. We looked at one that was a second amendment and then we looked at one that was a second amend to the second amendment.

Q. So take a look at Exhibit 8.

A. Yes, sir.

Q. Okay. That's dated as of December 31st, 2004, right?

A. That is correct. Effective as of February 29, 2004.

Q. That's right. And that's the document that had that .608 number in it, right?

A. Do you have that Bates label?

Q. I do. I do, sir. Good question. It ends with 4381.

And Mr. Daugherty's percentage at that time is 0.608, correct?

A. Yes, sir.

Q. Okay. But you know that this agreement was amended, right, because you reviewed the partnership agreements, right?

A. That's correct.

Q. Okay. So nobody would suggest using that number, right?

A. The .608?

Q. Yep.

A. Since it's amended, I mean, I would say that's a legal question. But my understanding is with an amendment then it supersedes this.

Q. You would never as a professional use a number from an agreement that was superseded and amended, would you?

A. If you're stating that it's superseded as an Officer of the Court then, correct.

Q. Okay. So go to the next Exhibit 9. That second amended and restated partnership was amended as of April 15, 2006, correct?

A. That is correct.

Q. Okay. And if you go to Exhibit 10, the second amended and restated partnership agreement was amended a second time, right?

A. That is correct.

Q. And that's as of April 15, 2007, correct?

A. Yes. But that number is different than the one --

Q. Just stick with me.

A. Okay.

Q. That was amended, correct?

A. That is a first amendment, yes.

Q. This is the second amendment, Exhibit 10 is the second amendment, correct?

A. I thought you had me on Exhibit 9, which --

Q. All right. I'll slow down.

So you established that Exhibit 9 is amended Exhibit 8, right?

A. Correct.

Q. And now Exhibit 10 amends Exhibit 9, right?

A. It doesn't indicate that it amends the first amendment. But logically speaking I would make that assumption.

A. Okay. And if you go to the page ending in Bates number 7748 you'll see that Mr. Daugherty's percentage is .783, right?

A. I do see that, yes, sir.

Q. Okay. In the work that you did, have you seen the second amended agreement ever amended again?

A. I have not seen, no.

Q. So is it fair to say that the Court could either pick the .7403 percentage in Mr. Klos' analysis that he got from the K-1 that he got from the IRS, or if he wanted to he could pick the 783 number out of the second amended agreement?

A. I don't mean to be controversial. But given the venue, I think the Court can do what they choose.

Q. But you have no -- there's no possibility in your mind, other than those two numbers, right?

A. Well, is there a possibility? Yeah, there's a possibility.

Q. What possibility is there, other than the number that was given to the IRS and the number that was given in the last amended partnership agreement, what other number could there be?

A. That -- you asked me what the Court could do and I indicated the Court could pick a number. And so --

Q. Okay. I'm asking your professional opinion, you're the expert.

A. Correct.

Q. You've been given information, right?

A. Correct.

Q. Do you have any information, other than the number in Mr. Klos' chart or the number in the second amendment to the second amended restated partnership agreement?

A. I do not.

Q. Thank you. That's the uncertainty.

Let's go to --

MR. BURLEY: I'll actually move to strike that side bar. That wasn't a question, Your Honor.

Q. Let's go to the second --

THE COURT: I'm -- look, this isn't a jury -- this is not a jury trial. I know how to handle what is being said and what isn't.

MR. BURLEY: Understood.

THE COURT: So I'm going to overrule the objection. But let's try to keep remarks down.

MR. MORRIS: Okay, Your Honor.

Q. Let's go to the next one, the applicable tax rate, 35 percent. You admit that that's the highest personal income tax rate that existed in 2008, correct?

A. We were on agreements. Where are we at now?

Q. I'm on the next line, applicable tax rate.

A. So you're on the demonstrative?

Q. Yep.

A. All right.

Okay. And what line now, Mr. Morris?

Q. The one that says, 2008 applicable tax rate, 35 percent.

A. Yes, sir.

Q. And you agree that that's the highest individual income tax rate that was in existence on a federal level in 2008, correct?

A. On a federal level, yes, sir.

Q. Okay. So sticking on a federal level, is there any reason the Court shouldn't apply that 35 percent in this case?

A. It depends, again. That is the highest -- the highest level.

Q. Okay. It can't be higher, fair?

A. I don't want to say it can't be. I mean, at the federal level that is the highest tax rate.

Q. Okay. Let's go to -- where are we next, the applicable statutory blended rate? Is that the next input? Oh, penalties, I'm sorry, penalties.

You took issue with the 10 percent on model three; is that right?

A. That's correct.

Q. And that's because it says, 20 percent in the -- in the regulation that you looked at?

A. In the statute it says 20 percent or 30 percent depending on which -- which part of it you're looking at.

Q. So if the Court used 20 percent or 30 percent, you would have no qualm with that, right?

A. I believe that -- no, no, I would not.

Q. Okay. And if the Court used 20 percent or 30 percent for the fifth scenario, you'd have no qualms with that, right?

A. To the extent that the Court looked at the statute and interpreted it as an Officer of the Court, then I would have no issue with it.

Q. Okay. Let's go down to the applicable statute -- the applicable blended rate. You said the problem with that was that they haven't taken into account compounding; is that right?

A. That is correct.

Q. Okay. Have you made any effort to try to compound and give the Court a number as to what the applicable statutory blended rate would be?

A. I have not calculated that. Rather I have looked at the attachment to opine that that number would not be correct. But I have not calculated it to determine what the correct number would be.

Q. How much time have you spent looking at this exhibit?

A. I don't know.

Q. Can you estimate?

A. I would say probably 10 hours.

Q. And in that 10 hours you didn't spend any time trying to figure out what the applicable tax rate might be?

A. The applicable tax rate?

Q. I apologize. The applicable statutory blended rate, the interest rate.

A. I did not.

Q. Okay. Time here is outstanding. I think we've discussed enough. That's an accurate number if one was calculating it from the tax payment date to the petition date; is that fair?

A. That's fair.

Q. And then the last one is the income on the previous refund. You take issue with the analysis. Do I have that right?

A. Define -- restate that question, please.

Q. Yes. Fair enough.

Do you take issue with the use of a 4 percent interest rate for purposes of creating time value of money?

A. I think you may be mixed up, because you're talking about the income on previous refund doesn't -- doesn't impact -- or the 4 percent doesn't impact that.

Q. This is -- this is an attempt to value Mr. Daugherty's use of the money, right?

A. Agreed.

Q. Okay. Is 4 percent fair?
A. I do not believe so.
Q. How much lower than 4 percent do you think it should be?
A. I don't have an opinion on that.
Q. But is it fair -- you don't -- you haven't spent any time thinking about that either, right?
A. It -- that's another variable that could be lower and it could be higher.
Q. Okay. But we're here telling the Court that 4 percent is the right number. Is it fair to say that it's somewhere between zero and 4?
A. I believe it is equally likely to be zero to 4 as well as higher.
Q. Okay. But we're not asking you to do higher, right?
A. I believe the Court has that discretion.
Q. Okay. And then -- and then the last question I have is in terms of finality. Can you turn to, I think it's 15, Exhibit 15, Plaintiff's Exhibit 15?
A. Yes, sir, I'm there.
Q. Okay. So this is the 4605, this is the field audit report that was completed in December of 2017, right?
A. This is -- this is one page from it, yes.
Q. Okay. And according to this page the adjustment

that's being made by the field audit as a result of the audit is that there's $166,332,713 of adjustments that are being applied here, correct?

A. Of portfolio income, yes.

Q. Okay. That number has never changed, correct?

A. I'm sorry, do what?

Q. That number has never changed, to the best of your knowledge, correct?

A. To the best of my knowledge, I have not seen that number change.

Q. And the appellate office is not going to conduct a new audit, correct?

A. I -- I have not seen indications of such.

Q. Have you ever heard of the office of appeals and the IRS conducting an audit?

A. I have -- in terms of conducting an audit, no. In terms of adjusting a number, yes.

Q. Okay. But the -- I'll just leave it at that.

That number is the exact same number that is scenario five in Mr. Klos' chart, right?

A. That is correct.

Q. And you have never heard the IRS suggest that there should be a greater adjustment, correct?

A. I have not seen documents to such.

MR. MORRIS: No further questions, Your Honor.

THE COURT: I've got a few questions for you, Mr. Liles-Tims.

THE WITNESS: Sure.

THE COURT: I'm going to be looking at, it's Plaintiff's Exhibit 59, which is your report. And in particular I'm looking at page 9.

So the chart that you have there that goes through this process, I just want to make sure that I'm clear because I don't -- I've never handled tax matters. Once the field examiner has come out and stated what they believe the adjustment should be, other than through negotiations, does that adjustment change?

THE WITNESS: In -- sorry, were you finished?

THE COURT: Yeah, I'm finished. Sorry, yes.

THE WITNESS: So it typically does not change on paper as much as it changes in terms of formality where we saw the -- the 4506 as well as the 886. Those two forms typically don't change. However, settlement agreements and so on and so forth may specify a different number.

THE COURT: Okay. And typically speaking, is it your experience that in those settlement negotiations that is the highest number that they're working from? In other words, they don't go into a negotiation and ultimately come out and say, you now owe us 1. -- sorry, 180 million?

THE WITNESS: So there's two parts to that

question. That number typically does not change. However, when you add in penalties and interest, there are times where that number becomes larger because they're adding on penalties and interest to that number.

THE COURT: And would that -- would the 166 million, would the penalties and interest be added to the 166 at the Highland Capital level, or would it be added to the partners when they file their amended returns?

THE WITNESS: That is an excellent question. And it can happen on both -- on both scenarios.

THE COURT: Okay. Are you aware whether or not the 166 includes penalty and interest as it pertains to Highland Capital, the entity?

THE WITNESS: Based off of the 886 and the 4506, it does not include penalties and interest.

THE COURT: Okay. And then what would be the highest rate of penalty that could be imposed on that number?

THE WITNESS: That is where the -- the Title 26 IRC 6662 comes into play. And it specifies a range between, again, 20 and 30 percent. And if it's viewed as a corporation, which there's question of that because in technicality it's not a corporation, it would be 30 percent. Otherwise it would be 20.

THE COURT: If the IRS adds penalty and interest to the 166 million, do they have the right to add

penalty and interest at the partner level on the return of Mr. Daugherty?

THE WITNESS: Yes.

THE COURT: Since it's already been assessed at Highland?

THE WITNESS: Yes.

THE COURT: Okay. Can a penalty ever be higher than 30 percent?

THE WITNESS: I have not seen documentation to indicate higher than 30 percent outside of outright fraud.

THE COURT: Okay. And to your knowledge there's no allegation of outright fraud on this case?

THE WITNESS: I have not seen any, no, sir.

THE COURT: Okay. Continuing with your diagram here. If they never come to an agreement or settle this matter and it goes to either the Tax Court or Federal Court, as I understand the process, at any point can the Tax Court or the Federal Court impose a higher number than the 166, separate and aside from penalties and interest?

THE WITNESS: Separate and aside from penalties and interest, I have not seen that in my experience.

THE COURT: Okay. But it has a possibility of going down?

THE WITNESS: It does, yes, sir.

THE COURT: Okay. I think Mr. Morris kind of hit this, but I just want to make sure. We neither got Mr. Daugherty's partnership interest based on the K-1 and the 886Z form or based on this second amendment to the second amended partnership agreement, those are the two numbers that are out there, to your knowledge?

THE WITNESS: To my knowledge, yes, sir. Those are the two most recent.

THE COURT: Okay. Do you know what -- at what percentage Mr. Daugherty filed his return when he filed the return?

THE WITNESS: It would be the -- what was in the 886, which is, I believe, the .7403.

THE COURT: Okay. And if -- when the time comes for Mr. Daugherty to amend his return, if he amends his return and maintains what's in the K-1 or on the 886Z form, would the IRS have to audit him in order to change that number to what is stated in the second amendment to the second amended partnership agreement?

THE WITNESS: Sure. So there's -- there's two parts to that. Number one is that once a settlement is made, then that number has to be basically flow through the partnership agreement for proper allocations. So it's possible that that .7403 changes based off of that number. So for instance, if it settles at the 166 million, it has to

abide by that partnership agreement and have allocations of profits and losses and so on and so forth. So it's possible that number changes. To the extent that we are to assume the .7403, from there then, I'm sorry, you asked another question there that had to deal specifically with that. Can you reask that.

THE COURT: Yeah. My question is is if he's filed his return with the .7403, I believe, and the audit issue on Highland is done, they issue new K-1s, he amends his return based on the .7403, but the partnership agreement says it'.78 whatever the number was, is it not -- does that not change until the IRS audits him? In other words, what's the risk to Mr. Daugherty of it actually coming back and saying, no, you should have been at .7863, or whatever that number is in the partnership agreement?

THE WITNESS: I understand that question. The risk, in my opinion, is not at the IRS level, it's at the issuance of the K-1 level as to whether that number changes.

THE COURT: Okay. So assuming that Highland, I don't know if it's Highland or if it's going to be the tax partner, but whoever issues the new K-1, once that's issued that's what he's going to be using in order to amend his return and recognize what should have been income back in 2008.

THE WITNESS: Based on an assumption of this

is final determination then, yes, I would agree.

THE COURT: Okay. There's been conversation or testimony about 35 percent being the highest for individual income tax rate. Is this issue, would it be at the individual income tax rate, or would there be some other applicable rate that would apply in this situation with Mr. Daugherty?

THE WITNESS: That is an excellent question. And this is a partnership and so, therefore, the income flows through to the individual and therefore only the individual's tax rate is applicable.

THE COURT: Okay. And am I correct at that rate highest could be 35 percent?

THE WITNESS: From a federal perspective, yes. It's possible that it's higher, that it's higher due to, as I said, the allocations of income and everything. More likely than not, 35 would be the highest.

THE COURT: Okay. And it's your testimony, if I have it correct, that you have no idea, or you're unable to estimate or give the Court a timeline of when you believe this would be resolved?

THE WITNESS: No, sir.

THE COURT: No, sir, you can't give me a timeline, or, no, sir, you can?

THE WITNESS: No, sir, I cannot give you a

timeline. These audits are -- take on their own life.

THE COURT: Okay. And I realize you testified you did not do anything with the blended rate. But in your opinion, and based on your expertise, what do you believe would be the range of the highest rate of interest and accrual by the IRS that would be applicable to this situation?

THE WITNESS: Sure. So effectively the best way to answer that is to look at what the interest was over that period of time. And it ranged anywhere from 3 percent to 9 percent. And so, again, you would look at what is that blended rate actually compounding daily that interest to determine a blended rate. But it would be somewhere between 3 and 9 percent.

THE COURT: Okay. So let me make sure that I understand. Your dispute with this calculation is what is the blended interest rate amount, not in the methodology used to calculate the interest. Does that make sense?

THE WITNESS: It's actually the reverse.

THE COURT: Okay.

THE WITNESS: I don't take as much issue with the 4.59. I don't believe it is an accurate blended rate. It's the calculation of its use. And it goes back to the testimony of the Rule of 72 where what you would do is you would take -- and to get technical on a compounded daily

matter it's not 72, it's 69.3 divided by the interest rate. So you would take 69.3 divided by 4.59. That would give you the number of years that it takes for a specific number to double. And so when you look at this demonstrative, the issue that I take is looking at, let's say column 3 there, the interest being accrued is off of the $215,488. And so the proper use and the compounding daily would indicate that at 10 1/2 years, that number of $215,488 should have almost doubled. And it clearly hasn't by the $103,860.

THE COURT: Okay. So is it fair to say that you believe that this is just a simple interest calculation of how they got to the interest number as opposed to the compounding daily?

THE WITNESS: It's either that or they've made a calculation error in trying to determine what a present day value is versus a future day value.

THE COURT: Okay. All right. I believe those are the questions that I have. I'm going to allow either party to ask any questions that they might have based on the questions of the Court.

MR. BURLEY: Nothing further from us, Your Honor.

THE COURT: Mr. Morris?

MR. MORRIS: If I may just have one moment?

THE COURT: That's fine.

MR. MORRIS: I have nothing further, Your Honor.

THE COURT: All right. You may be excused. Thank you.

MR. YORK: He may be fully excused, right, Your Honor, Mr. Liles-Tims?

THE COURT: Mr. Liles-Tims, yeah. Mr. Morris, are you fine with that?

Yeah, he's excused.

MR. YORK: Thank you, Judge.

MR. MORRIS: Highland calls Jim Seery.

THE COURT: Okay. Mr. Seery.

And, again, my law clerk will go ahead and swear you in.

(The witness was sworn by the Court's law clerk.)

THE COURT: You may proceed.

JIM SEERY

The witness, having been duly sworn to tell the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. MORRIS:

Q. Good afternoon, Mr. Seery.

A. Good afternoon.

Q. Are you currently employed?

A. I am, yes.

Q. By whom?
A. Highland Capital.
Q. How long have you been with Highland?
A. Six years.
Q. Can you describe for the Court the circumstances under which you joined Highland Capital?
A. I was selected in early 2020 in January to be one of two independent directors. The two independent directors then selected the third independent director for Highland in bankruptcy. That was approved by the Bankruptcy Court. And then subsequently I became the CEO of Highland Capital, also approved by the Bankruptcy Court.
Q. Do you recall when you became approved to serve as the CEO of Highland?
A. The order was in July of 2020. It was nunc pro tunc until some time in March when I'd been the lead director and running it any way.
Q. And did there come a time when Highland proposed a plan of reorganization?
A. Yes.
Q. Did there come a time when it was confirmed?
A. Yes.
Q. Did there come a time when it was effective?
A. Yes.
Q. Did your role at Highland change after the

effective date?

A. After the effective date the CRO title dropped and I just became the CEO. In addition, because the plan has a claimant trust, I became the Claimant Trustee.

Q. All right. Can you just describe for the Court briefly --

A. Sorry, this chair is really tight here. I apologize. There we go. We're closer.

Q. Okay. Can you just describe briefly for the Court your professional background before you got to Highland?

A. Yes. I was a restructuring and finance lawyer for ten years before I went to the business side. The business side for me was investment bank and Lehman Brothers. I ran prop investments in distress, debt, and then ultimately ran the loan businesses globally there, restructuring and a number of other groups aligned with the loan business.

Q. And after leaving Lehman did you join Highland, or did you do anything between?

A. After leaving Lehman, we started our own -- actually went back to the law for a couple of years. Ran a restructuring -- co-ran a restructuring business out of New York for a large law firm. And then ultimately we had our own hedge fund, Long/Short Credit, small billion and a half dollar hedge fund which we ran for about six years.

Q. Okay. Let's cut to the chase here. In your

capacity as the CEO of Highland, are you generally familiar with Pat Daugherty?

A. Yes.

Q. And do you understand that he filed certain claims in the Highland bankruptcy case?

A. Yes.

Q. Can you describe your understanding of those claims at a high level?

A. There were multiple claims and they're extremely large, so you'll find them on your system, but you won't find them on the KCC cite because they're really big. They're consolidated in what's called Claim 205. That claim has been settled except for one piece. One piece was an unsecured claim for basically tax indemnity, for lack of a better term and interest of the petition date and that was $2.65 million, roughly.

Q. Okay. And prior to confirmation had a settlement in principle been reached with Mr. Daugherty?

A. Yes.

Q. Can you just describe for the Court the circumstances that led up to that point?

A. We were driving towards confirmation. Had reached -- we'd done mediation with a number of creditors. I don't believe Mr. Daugherty was part of that. But on the side there was separate negotiations with Mr. Daugherty. His

claim had been estimated by the Bankruptcy Court for voting purposes. And we had been negotiating and we reached agreement with him on a cash settlement, which included some cash at confirmation, a Class 8 claim, which I think was about 8.25 million. We expected to pay about 70 cents on Class 8. And then a Class 9 claim, which at the time I believe was about 2 million, 2.2 million, and that we expected to pay zero at confirmation.

Q. Did that settlement get consummated?

A. It did not.

Q. Why not?

A. At confirmation we had -- we had reached a settlement with UBS, as well. And UBS had a very large claim. And we announced that settlement and I think we were about to document it shortly. Shortly after confirmation we had not yet documented Mr. Daugherty's settlement. Shortly after confirmation we discovered a massive, what can only be described as a massive fraud involving Highland and UBS and the Highland principals. And we had to go to UBS and tell them, we can't cut your deal, or sign up your deal because we have now discovered this and we have to tell you about it before we consummate a deal. We very quick told them about it. And very quickly had to renegotiate that deal with UBS. And subsequently that got approved in a public notice. When Mr. Daugherty saw that, he then wanted to renegotiate his

deal. His argument was that seeing the fraud that happened, vis-a-vis UBS, gave heft -- more heft to some of his claims for fraud, as well.

Q. And in the ensuing months, did you personally negotiate aspects of what ultimately became the settlement with Mr. Daugherty?

A. Yes.

Q. And do you recall when that settlement was ultimately reached?

A. November 2021. It took -- it took months and months to come to a final agreement. And it didn't move that much from the original settlement we announced in court, but there was more consideration for him, more cash dollars. Bigger both, I believe a bigger Class A claim, but maybe not, but a bigger, I think another million dollars under Class 9. Which again at that time was not expected to get any distribution, but did have option value.

Q. Okay. Can you turn in your binder to Exhibit 5, please?

MR. YORK: Highland 5?

MR. MORRIS: Yes, sir.

A. I've got it.

Q. Is that the settlement agreement you just referred to?

A. Yes.

Q. And do you recall that the following March the Bankruptcy Court approved that settlement?

A. I believe it was beginning of March, yes.

Q. Yep. All right. Let's -- let's focus on the claims here. Are you aware that Mr. Daugherty has a breach of contract claim and a claim for specific performance relating to certain books and records?

A. Yes. Yes. So the breach of contract claim being the tax claim, if you will. And the books of records claim which I thought was a damage claim and a specific performance. But as of this morning, I guess it's a specific performance.

Q. Let's go to paragraph 8 and let's just deal with the books and records claim, if we can.

In the middle of paragraph 8 there's a sentence that says, "Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on HCMLP system." Do you see that?

A. Yes, I do.

Q. Do you understand that that is the basis for Mr. Daugherty's books and records claims?

A. I don't understand that that sentence is the basis of Mr. Daugherty's claims. I understand that he's saying we may not have adhered to that sentence. But his complaint is entirely different from that, as your demonstrative showed

and anyone reading the complaint can see.

Q. Let's --

A. His counterclaim.

Q. -- let's just talk about HERA and ERA for a moment. As the CEO of Highland do you have an understanding of what HERA was?

A. Yes.

Q. What's your understanding of what HERA was?

A. So it was called Highland Employee Retention Assets and it was a vehicle that was set up after the 2008 financial crisis. Passive assets that Highland had were put into this vehicle to sit there and hopefully accrue value. And that would then ultimately go to certain Highland employees who had -- who became vested over time. So it was a delayed way to give them investment in the business and upside that would get paid out over time.

Q. All right. Just focusing on HERA, did HERA have any employees at any time, to the best of your knowledge?

A. No. No, it did not.

Q. Did HERA have any operations at any time, to the best of your knowledge?

A. No, it did not.

Q. Did HERA lease any of its own office space at any time, to the best of your knowledge?

A. No, it did not.

Q. Did HERA have its own server at any time, to the best of your knowledge?

A. No, it did not.

Q. Did HERA have its own email address at any time, to the best of your knowledge?

A. No, it did not.

Q. Let's go to ERA. Can you explain to the Court your understanding of what ERA is?

A. So HERA was a -- the vehicle was a limited liability company. Limited liability companies are designated by the interest in them or membership interests. And they are managed, unlike a corporation which is managed by a board of directors and officers, typically a limited liability company is managed by a managing member. ERA was the managing member of HERA. And that structure came into being in 2012, '13, that part of the structure.

Q. Did ERA have any employees of its own?

A. No.

Q. Did ERA have any operations of its own?

A. No.

Q. Did ERA lease any office space of its own?

A. No.

Q. Did ERA have its own server?

A. No.

Q. Did ERA have an email address?

A. No.
Q. Did ERA have any books and records?
A. Not really. Very -- almost nothing. It just didn't have really anything. It didn't have financials. It was disregarded. It didn't have tax returns, I'm sorry, because it was disregarded. So it really didn't have very much of anything.
Q. Going back to paragraph 8, you'll agree that Highland agreed in that paragraph to transfer its interest in HERA and ERA to Mr. Daugherty?
A. Yes. So this was a late add in those negotiations. And Mr. Daugherty wanted these entities transferred to him. They didn't have any value to Highland. They didn't have any assets. So we agreed to transfer them very carefully.
Q. Okay. Can you go to Exhibit 52, please?
A. I'm there.
Q. Okay. The second page there's a document entitled transfer agreement. Do you see that?
A. Yes.
Q. And is that your signature on the second page?
A. That is, yes.
Q. And did Mr. Daugherty sign it on the same day that you did?
A. Yes.
Q. And is this the document by which Highland

transferred its interest in ERA to Mr. Daugherty?

A. That's right. This is the ERA as opposed to the HERA membership transfer agreement.

Q. And I see interest is a defined term in this document; is that right?

A. That's correct.

Q. And what does interest mean for purposes of this document?

A. It's the membership interest in ERA that would be standard when transferring the membership interest.

Q. Let's go to the next document. Is there a second transfer agreement in Exhibit 52?

A. Yes. This is the one related to HERA.

Q. Okay. And what is being transferred pursuant to this agreement?

A. Once again this is a transfer of the membership interest of HERA to Daugherty. HERA's a little bit different because of the original structure and the way employees -- I mentioned they had to vest. It had two different kinds of members interest. I think they call them common units and Series A preferred units, which is here. And so those are the membership interests that are transferred to Daugherty pursuant to this agreement.

Q. Okay. Let's go back to the settlement agreement, Exhibit 5, paragraph 8, page 10. The next --

A. Sorry. Page 10, yes.
Q. Yeah. Going back -- going back to the middle again where it says, "Such transfer will include the HERA and ERA books and records (spreadsheet) maintained on HCMLP's system." Are you familiar with that particular sentence?
A. Yes.
Q. Was that sentence the subject of negotiations?
A. Yes.
Q. Do you know who conducted those negotiations?
A. I did.
Q. And who did you negotiate with?
A. Pat Daugherty.
Q. And what do you recall about those negotiations?
A. After this provision was added, which related to the HERA and ERA interests, Daugherty said, I also want the HERA and ERA books and records. And we want it to be very clear that we didn't want any involvement with HERA and ERA and anything he thought he might be doing with HERA and ERA. So I went to my people and said, What do we have? My people meaning Dave Klos, who you saw, my general counsel. We searched our records. Dave told me, we don't have anything. We just have a spreadsheet. We have corporate books and records, general counsel told me, resolutions. There's no giant set of books and records and they're all in different places. So we'll have to go find them.

So I went back to Daugherty and said, we don't have much. We'll give you what we have of the HERA and ERA books and records. But you should know, it's going to be very small. We're just taking them off our system. We're not going looking for anything. And we're not going to incur any costs or expenses related to this.

Q. Is that concept of not incurring costs, is that reflected in the agreement in this paragraph 8?

A. Yes.

Q. And where is that?

A. Such transfer will be without any liability or material cost to HCMLP, or its affiliates, or the other HCMLP released parties, including any liability with respect to any assets that HERA and ERA ever actually or allegedly owned, possessed, controlled, and that were actually allegedly transferred, conveyed, sold, written off, or otherwise disposed of in any such case or disposition.

Q. And what was -- what was your intent in including that provision?

A. The intent of including that provision and a couple of others and throughout, you have the transfer. And then after that for the remaining page, onto the next page, are a bunch of limitations. When we -- when Daugherty asked for a HERA and ERA transfer, we said, we'll assign you these entities, because they're -- have the sleeves off our vest,

really. Well, we don't want anything to do with whatever you're going to do with them. We don't want any liability and we don't want any costs. So we'll -- then he wanted the books and records. We said, we'll give you the books and records. But, again, it's a limited subset of things. We're going to provide them to you. But we don't want anything else to do with them. We don't want this to be at any cost to us.

Q. Okay. Back up to the sentence that begins, Such transfer will include. Do you have any recollection as to why the parenthetical spreadsheet is included there?

A. Yes.

Q. Why was that term included in a parenthetical?

A. Because when I called Dave Klos and said, what do we have? He told me that we had -- they weren't running -- the financials for HERA and ERA were not run on Highland's accounting system, they were run on QuickBooks. Highland used our -- and so he told me all we have is QuickBooks, so we'll give you the output from QuickBooks. I believed that just to be a spreadsheet. I thought we were actually going to have to print it out and deliver it to him. It turns out we could deliver that electronically.

Q. Okay.

A. And we can give him the full output of the QuickBooks for HERA and ERA.

Q. After -- after the Court approved the settlement, did Highland take steps to implement it, the agreement?

A. Yes.

Q. What steps did it take?

A. There's a number of releases contained in here. There was obviously the payments that we needed to make under the settlement agreement. We also began assembling these books and records of HERA and ERA for Daugherty. And we worked on that for the next, I think about month and a half.

Q. And the membership interest in HERA and ERA were transferred?

A. They were almost done. That was the exhibit we were on. I thought those were done almost right a way. Because that's pretty straightforward and easy to do. It's just a transfer agreement of the LLC membership interest.

Q. Was there any litigation that needed to be addressed or resolved pursuant to the settlement agreement?

A. Yeah. I thought -- my apologies, I thought I mentioned it. There was a number of litigations. I think Daugherty wanted some partial vacatur of judgments that were against him in Texas court. I think they were dismissed. They, but not us were dismissing a Delaware action. I don't recall if we had one to dismiss, as well, because there were -- there were several actions and there might have been counterclaims. So we addressed all those things. So it was

litigation issues, the payments, and then the transfer of the membership interest and then the follow up with the books and records of HERA and ERA.

Q. Other than the HERA and ERA books and records, is there any aspect of the settlement agreement that Mr. Daugherty has ever contended Highland hasn't complied with, to the best of your knowledge?

A. No. I think it's worked out extremely well for him.

Q. Okay. Let's go -- and after the settlement approved, did Highland make efforts to produce the HERA and ERA books and records that were maintained on Highland's system?

A. Yes.

Q. Can we go to Exhibit 2, please? Starting with my email at the bottom of the first page that continues on to the top of the second page. Can you just let me know if you're familiar with that document?

A. Yes.

Q. And what -- what is that document?

A. This is the transmit. You've got an internal email here just showing everybody what you're doing to, your counsel. And we're delivering these through counsel, meaning the books and records that we've assembled for HERA and ERA. And you were delivering it to Daugherty's counsel. And this

is the -- the first letter is you basically just showing us, you know, how we're going to get this done and making sure that you're saying it correctly. And you gave us a copy of this letter, as your practice, to make sure that I approved it.

Q. And do you recall that Highland provided a link with certain HERA and ERA books and records?

A. Yes.

Q. And do you recall that Highland also provided further emails with zip files that contained additional tax related documents and other business records?

A. Yeah. These were all of the corporate books and records. So all of the normal corporate formations, resolutions, director consents, whatever we had in the corporate files that we could assemble.

Q. Uh-huh.

A. And then all of the financials, so the complete output from Oracle -- not Oracle, I'm sorry, from QuickBooks and any of the historical tax filings of HERA, again, ERA was disregarded. And then any other corporate documents that we had assembled at that time.

Q. Okay. And then in the last substantive paragraph I wrote, "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." Have I read that correctly?

A. You have, yes.

Q. Did you authorize me to send that -- to include that in this email?

A. I did. And it's true. We did a lot of work to get these documents delivered. These were all of the books and records that we have for HERA and ERA, all of the financial records of HERA and ERA. Historical tax returns, as I said. And we thought we had complied with everything in -- all the requirements of the settlement agreement at this time.

Q. And to the best of your recollection, did Highland ever agree at any time after May 5th, 2022 that it did not comply with paragraph 8 of the settlement agreement?

A. No, we did not.

Q. Did Highland undertake to do a final review to be certain that there were no further HERA and ERA books and records?

A. I believe that was just -- we didn't do a final additional review. I believe Dave wanted to just -- Dave Klos wanted to just double check that he had one other thing. And if he determined that that was already been produced, so that's fine. And then on the next page you do see what was actually transmitted. This was the first of the transmittals. So this is 38.9 megs, a lot of data. And then

there were two other files which bring the total from this delivery over 50 megs.

Q. Okay.

A. Thousands of pages.

Q. Did there come a time when Highland produced more information to Mr. Daugherty?

A. There did. Mr. Daugherty is nothing, if not persistent. And continued to harangue me for backup information related to the books and records and the financials that we provided.

Q. And did there come a time when you personally wrote to Mr. Daugherty to address that issue?

A. Well, we actually talked to him a couple of times. I think that's some of the tape recordings he has with me and Mr. Klos. We did not know we were being taped. And we said, okay, we'll take a look. We'll see what we can find. And really put David Klos on the job to go find as many backup documents as he could find related to the QuickBook records of HERA.

Q. Can you go to Exhibit 3, please?

A. Yes.

Q. Is that an email that you sent to Mr. Daugherty in October 2022 on the topic of books and records?

A. Yes.

Q. And did you describe for him the documents that

were being produced?

A. Yes. As you can see, this is a detailed email and it's -- it was thoughtfully put together because at this point I'd already been dragged into Mr. Daugherty's stalking dispute with Mr. Ellington. And I really wanted nothing more to do with any of these folks. So we put together a comprehensive filing. We resent him all of the corporate docs as you see there; the HERA governing docs, the amendments, the assignments, correspondence. And really wanted to spell it out so I was clear that somebody could see what we gave. We gave all the HERA docs. We resent the QuickBook docs. And then we actually went out and did a lot of work to get backup documents. And this was, I believe, over 100 megs of data.

Q. And did you tell Mr. Daugherty in this email, "Well, we believe the information already provided satisfied HCMLP's undertakings under the settlement agreement, you were nevertheless going to provide additional information that was requested"?

A. Yes. This was really responding to his request for backup. We thought when we did the prior delivery in May that we were done. And this was a follow up to say, okay, we'll redeliver all of those documents to you. And we did more work finding backup documents that you said you were interested in. And we found really the vast majority of

anything that could have been related to the financials that we'd previously delivered.

Q. And can you read for the Court what you wrote there in the last paragraph beginning, upon transmission?

A. Oh, you mean the second to the last.

Q. Yeah. Last substantive paragraph.

A. Upon transmission of the information described above, HCMLP will have satisfied all of its obligations under the settlement agreement. And our involvement with 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.

Q. Okay. And was there any further communications in the weeks that followed concerning your email and the documents that were produced by Highland?

A. I thought not. But then in preparing for this hearing, I noticed that there were a couple of back and forth. And really they related to telling Mr. Daugherty, look, we want to take down this large share file site that we put up for you. I want to make sure you have gotten these documents and downloaded everything that you think you need. And so there's a couple of emails back and forth on that. And I think you've got them in an exhibit somewhere.

Q. It's 51.

A. Okay.

Q. Can we turn to Exhibit 51?

Is this the back and forth that you just referred to that followed your delivery of the October 19th email to Mr. Daugherty on the topic of books and records?

A. Yes. So it starts -- and I'm not sure of the order of these. I assume it starts with the most recent to the lease. And it starts with our outside consultants at the time, DSI, making sure that Daugherty and his counsel had full access to the share file that we previously posted to let them know that if they needed help, DSI was available to do that. And then you'll see in the prior emails it looks like maybe Daugherty had had trouble getting to it. So we wanted -- we told him that we were going to take the site down, so we wanted to make sure that he got everything. And then the subsequent emails show that it's really just -- all of these emails were put to follow up with the original email, delivery email that I sent on October 19th.

Q. To the best of your recollection, in the weeks and months that followed did Mr. Daugherty complain about the scope of the documents that Highland had provided in response to Section 8?

A. No, he did not.

Q. And in the weeks and months that followed, did Mr. Daugherty dispute Highland's contention that it had complied with the books and records provision of Section 8?

A. No, he did not. I don't even think I spoke to him.
Q. Do you recall if Mr. Daugherty ever raised the issue again?
A. I don't believe until we got the counterclaim, although his counsel, I think, raised it with you.
Q. So go to Exhibit 53, please.
Do you recall that in late January 2024, approximately 15 or 16 months after your October 2022 email, Mr. York wrote to me and asked for additional documents concerning HERA?
A. I see that, yes.
Q. And is this -- did you see this letter on or about the time that it was sent?
A. Yes.
Q. Do you recall if we responded?
A. I think we did not respond, at least not initially. We were quite sure we had already satisfied all of our obligations. We really wanted nothing to do with what he was doing with this entity, or any litigations he might be trying to bring. And the letter actually had some very odd provisions in it, so I know we discussed them and took a little bit of umbrage at them. But we didn't do anything.
Q. Okay. If you can go to Exhibit 54. Do you see at the bottom of the second page you'll see a copy of Mr. York's email that attached the letter we just looked at and then he followed up on March 1st; do you see that?

A. Yes.

Q. And do you see that he says that he was attaching a copy of a complaint that was filed?

A. Yes.

Q. Did you have any knowledge that a complaint was being filed in the Northern District of Texas?

A. I knew Mr. Daugherty intended a lawsuit against someone, I assumed it was Dondero and Okada, because that's what he always complained about.

Q. Uh-huh.

A. But I did not know that this was being filed at this time. And I certainly had not seen it before it was filed.

Q. And if you go to the prior page, do you recall that I responded after the weekend?

A. Yes. I think we went back to Mr. York and told him we previously gave you everything we're required to give you under your agreement. And that's that.

Q. Okay. Do you recall that Mr. Daugherty pressed one more time for more documents and information concerning or related to HERA?

A. Yes. I believe it was one of his other counsel, the counsel who brought the action in the Northern District of Texas.

Q. Can we go to Exhibit 4, please?

Do you recall that on May 10th another lawyer for Mr. Daugherty, Mr. Bobo, wrote to me on the topic of HERA and ERA documents?

A. Yeah. To be fair, he's a lawyer for HERA, which Daugherty now owns all of the membership interest in because of our transfer.

Q. Okay. I appreciate that. Do you see at the bottom of the second page Mr. Bobo write after quoting -- after purporting to quote from paragraph 8 of the settlement, "This language is neither ambiguous nor confusing and includes all books and records that Highland has related to HERA without caveats or conclusions." Do you see that?

A. Yes.

Q. Did you understand at that time that Mr. Bobo on behalf of HERA was seeking documents that Highland had that were related to HERA?

A. Yeah. This is -- this is a follow up of what Mr. Daugherty sought for backup, which weren't books and records and HERA and ERA, but things that related to their financials. And it's evolved since then to be this type of language and the others that we see in the counterclaim and in the various pleadings.

Q. If we went back and looked at the settlement agreement, did Highland have any obligation to give HERA anything at any time?

A. No.
Q. Okay. Do you see that at the end of Mr. Bobo's email he threatened to sue Highland if Highland didn't comply?
A. I recall it. I'd have to find it.
Q. If you look at the last sentence he writes, "Rest assured, your continued refusal to comply with the settlement agreement will result in our seeking enforcement of the same with the Bankruptcy Court."
A. I see that, yes.
Q. Okay. And did you authorize me to respond to Mr. Bobo?
A. Yes, I did.
Q. And did I do so on the prior page?
A. You did.
Q. And did we again tell Mr. Bobo that Highland had complied with all of its obligations?
A. Reiterated that. Explained to him why what he was asking for wasn't part of the contract. And told him if you don't think we're living up to our agreement, you should go to the Bankruptcy Court.
Q. Okay. Did Mr. Daugherty ever come to the Bankruptcy Court before filing his counterclaim in October 2025?
A. Not with respect to this, no.

Q. Okay.

MR. MORRIS: Your Honor, I just have one or two more questions on this topic and then just a couple of more after that.

May I just show him the demonstrative that I used this morning?

THE COURT: Do you mean the slides, or do you mean --

MR. MORRIS: That I used in the opening.

THE COURT: Okay.

MR. MORRIS: If you can just go to, I'm looking, Your Honor, at slide 9.

Do you have that, Your Honor?

THE COURT: Yes.

Q. Mr. Seery, does the information on slide 9 accurately describe, to the best of your knowledge, the information that was provided to Mr. Daugherty pursuant to paragraph 8 on May 5th and October 19th respectively?

A. Yes. And this -- these are reflected to some degree, certainly on the October 19th, but the May 5th there's less of an explanation, but that's the 40 megs that then you then added on to that becomes over 50 megs of data. And that's the information that was given on May 5th, the HERA/ERA books and records, HERA/ERA historical financials, HERA/ERA historical taxes, full satisfaction. Again, 50 megs

of a fair amount of data. And then, as I explained and had in my letter that we just looked at, in October we re-delivered those corporate books and records. We went and found backup for the QuickBooks data that we had already given him. We gave him historical data on Restoration Capital. We gave him historical data on Smith Barney. Why does it end in 2012? Because after that HERA didn't have any more assets. Those assets were swept to Highland. That's actually the basis of Daugherty's original claim that we settled. And we gave him the tracking sheets for all of those assets up to 12. And reiterated that we satisfied our obligations.

Q. Okay. Let's just finish up with a few questions on the reserve claim. Are you aware that Highland is looking to disallow or estimate Mr. Daugherty's reserve claim?

A. Yes.

Q. Do you know why it's called a reserve claim?

A. It's called a reserve claim for two reasons. Number one, it's the thing we reserved and didn't decide. But number two, we fully reserved on it. So his claim was filed in the amount of -- full amount on the comp statement, 1.47, I believe, million dollars. And then Daugherty included interest on the addendum to his proof of claim of 1.1. So that takes it up to 2.65. And the 2.65 is what we've reserved and it's been fully reserved since, I think

2023. It's in one of the tolling agreements that's part of the Court docket.

Q. Are you aware that one of the reasons Highland is asking the Court to disallow the claim is based on Highland' contention that the claim has been satisfied to the extent there ever was a claim?

A. Yeah. I think there's three basis that we have to disallow the claim. Number one, there is no contract for indemnity, guaranty, anything else. And I think we've gone through that. That's legal argument. Number two, importantly and sometimes gets overlooked, he received $1.3 million in 2009 from the IRS. And he's had that money for 17 years.

Q. Okay.

A. And then there's the arguments we've talked about before specifically related to his employment agreement, which we think is really the end of the story.

Q. Well, let's look at the employment agreement. If you can look at Exhibit 11. And go to paragraph 3.1(a). Does Highland rely on that paragraph in its first cause of action to disallow Mr. Daugherty's claim in its entirety?

A. Yes.

Q. Can you describe for the Court your understanding of that paragraph and what Highland's position is with regard to it?

A. Yes. Mr. Daugherty claims that the tax refund he got from the IRS was a bonus from Highland, or a payment in lieu of bonus. He would have gotten that tax refund irrespective of anything on a comp statement because he got it because he was a partner in Highland. He had an employment agreement, even though he was an at-will employee. And it's clear in here that he was subject to the terms and abiding by the terms of the employment agreement. If it's a bonus, it's very clear that typically any bonus is going to be paid in installments. It's going to be multiple installments, unless otherwise agreed. He argues that that somehow modifies other parts of the sentence and makes very little -- parts of the paragraph when it's in one sentence. It's very specific and Mr. Daugherty knew this. And every Highland employee has known this and this started as soon as I got into the bankruptcy and was dealing with employees with their deferred bonuses that you must be employed at the time that the bonus is going to be paid. If you are not, it has not been earned and you don't get it. And that's crystal clear in the agreement.

Q. And can you just point the Court to where in the agreement that's crystal clear?

A. It's the second to the last sentence. I'm sorry, third to the last. The executive must be employed on the payment date or dates, parenthetical s, in order to be

eligible for the bonus.

Q. Okay. Is there another provision in the employment agreement that Highland relies upon in asking the Court to disallow Mr. Daugherty's claim?

A. Yes. Section 4.5.

Q. And what about that section is Highland relying upon?

A. Mr. Daugherty had an option when he left, as every employee who had a similar provision had. And there were a few people who had contracts. You can either sign the separation agreement and deliver it that's next to this agreement, or -- and then you release Highland and you get your six weeks of severance, or you don't sign it and you don't release Highland. So by signing it, you'd only get six weeks of severance and you'd only get -- for his tenure, because he had enough years. And you would -- but you'd release Highland.

And we've seen a letter earlier, I believe it was in the demonstrative. He attempted to negotiate a different deal and ultimately never signed and delivered Exhibit A.

Q. And what's the consequence of not delivering a separation agreement and release?

A. Oh, it's very clear. In the last sentence it says, In the event the executive declines to sign the separation agreement and release, he/she shall not be entitled to any

severance and the company will have no further liability or obligation to the executive under this agreement or in connection with his/her employment or termination.

Q. And do you understand that Mr. Daugherty resigned from Highland in late September 2011?

A. It was 2011, fall, I forget the exact date. But I think you're right around the time.

Q. Can you go to Exhibit 40, please?

Are you aware based on your review of Highland's records that Mr. Daugherty and Mr. Dondero attempted to negotiate a resolution of their disputes after Mr. Daugherty resigned?

A. Yeah. I think it didn't -- there's a long litany of evidence of this, some of which is now in the record of the back and forth. And Daugherty was looking for a different deal. Dondero was looking for a different deal. And they never were able to reach agreement on what that would be.

Q. Okay. But are you aware that on or around October 27th Mr. Dondero sent some separation agreements to Mr. Daugherty?

A. Yes.

Q. And if you turn to Exhibit 41, is it your understanding that that is one of the documents that was attached?

A. That is one of the documents. It was a package of documents, three separate, I believe. And they provided a lot of value to Mr. Daugherty, but they also provided a lot of release to Highland and Mr. Dondero. And a lot of the value, some of it would be paid by Highland, but a bunch of the value would be paid by companies that Highland controlled.

Q. If you take a look at the second page of this letter agreement, directing your attention to Section 3(c)(ii). Do you have an understanding of what that is?

A. Yeah. This is part of paragraph 3. It's rather complicated, complex. It is the separation -- what they call the special separation compensation. And basically (c) is a tax indemnity related to certain tax years. And then (c)(ii) is a broad indemnity that would have covered anything related to -- to this audit. And you've got (c)(iii), as well. Now they also require him, if he -- if Highland provided that value and then subsequently IRS sent him more money, he had to send it back to Highland. So it was a backstop for potential tax liability.

Q. And did Highland agree to pay penalties and interest associated with any notice of tax due that was issued by the IRS with respect to the income being allocated to Mr. Daugherty?

A. It would have if this agreement were put in place.

And this agreement was part of a, as I said, I believe it was a three-part package. So we had to agree to all parts.

Q. Okay. And your understanding is this was never signed; is that fair?

A. This was never signed, no.

Q. Okay. Last couple of questions. Are you aware that under Section 502 the Court shall estimate any contingent claim if the failure to do so will result in the undue delay of the administration of the bankruptcy case?

A. I am. I was a bankruptcy lawyer for ten years.

Q. Does Highland contend that the failure to estimate Mr. Daugherty's claim will unduly delay the administration of the Highland bankruptcy case?

A. Yes.

Q. And why does -- why does Highland contend that?

A. Well, I think you heard Mr. Daugherty's expert say there's no expectation of when this is going to end. What I think's really important to understand in context is this audit took seven years. There were hundreds, and I mean hundreds of IDRs, individual document requests from the IRS that were produced. Ultimately they completed their audit and issued their findings in the end of 2017. We're now nine full years later and we don't have a conclusion. Why? Because the tax matters partner is entitled to appeal. And they have continued to appeal. And it looks like they're

going to continue to appeal and they haven't been able to resolve it. And there's no end in sight in Mr. Daugherty's expert's view. And I tend to concur with that.

The case has to resolve. This case is six years old. More than six, six and a half. And it has a finite limit to the life of the claim in trust. The claim in trust had a three-year term. It had two potential discretionary one-year extensions. And as a liquidating trust, it is required not to be in continuing business, but has to have an end date. And without modifying the plan and without taking substantial tax risks related to the treatment of the trust, this thing can't be extended.

Q. And, I'm sorry, can you explain to the -- let me ask -- withdrawn.

If dissolution does not begin on or before August 11, 2026, is it your understanding that there could be adverse consequences for the claim in trust and for Highland?

A. There's a risk for sure. So --

Q. Can you just explain to the Court your understanding of what that risk is?

A. Again, a liquidating trust is not a partnership. It's not a limited liability company. It's not a corporation. And it exists to liquidate and make distributions to creditors. To the extent that it's looked at as a continuing business by the IRS, there could be a risk

of adverse tax consequences. But importantly, there is no mechanism to extend the trust. There is no mechanism to go beyond that August 11, 2026 date.

Q. Is it your understanding that the August 11, 2026 date was a date that the Official Committee of Unsecured Creditors insisted upon as one of the conditions to agreeing to Highland's plan in the form of claim and trust agreement?

A. It was a key -- it was a key provisions. There's a number of key provisions. They didn't want it to go five years. They wanted it to be done at three. Unfortunately we have not been able to do that and that's why the two extensions were built in to the max five years that we believe we could get.

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

THE COURT: All right. We've been going at this for about two hours. We're going to go ahead and take a 10-minute recess.

(Brief recess ensued.)

THE COURT: You may proceed, Mr. York.

MR. YORK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. YORK:

Q. Good afternoon, Mr. Seery.

I just want to make sure we get one thing straight. You

said you started working at Highland in 2020; is that correct?

A. Yes.

Q. Okay. And so you weren't around at Highland back at the time Mr. Daugherty was employed there, right?

A. No.

Q. Or even for about an eight or nine-year period after he resigned, right?

A. Yes.

Q. Is that correct?

A. That's correct.

Q. Okay. And so you weren't involved in the preparation of Mr. Daugherty's compensation in a benefit statement that Highland issued to him in February of 2009, correct?

A. That's correct.

Q. And you weren't -- you haven't talked to anyone at Highland that was involved in the preparation of that compensation and benefit statement; isn't that correct?

A. I've talked to dozens of people who were at Highland who worked on it, but I have not talked to them about the compensation statement.

Q. Right. And you also were not involved in Mr. Daugherty's -- discussions relating to Mr. Daugherty's resignation and the proposed separation and release

agreement, correct?

A. That's correct.

Q. Nor have you talked to anyone that was a current or former employee of Highland that was involved in any discussions with Mr. Daugherty about that separation and release agreement, correct?

A. That's correct.

Q. All right. And, in fact, if we go to Highland Exhibit 11, let's take a look. That form of separation and release agreement that you spoke about earlier, just to be clear, it is four pages long, isn't it?

A. I'm sorry.

Q. It's four pages long.

A. Exhibit --

Q. 11, Highland Exhibit 11.

A. -- 11. Exhibit A?

Q. Yes, Exhibit A. The form of the separation and release agreement that is listed -- that was attached to Mr. Daugherty's employment agreement. That form of separation and release agreement was only four pages long, correct?

A. It's, yeah, four single space pages, yes.

Q. All right. And if we go then to what is Highland's Exhibit 41, let's just compare real quick. The separation -- the draft of the separation and release agreement that was

sent to Mr. Daugherty is a total of, based on the header at the top, 18 pages; isn't that right?

A. Yeah. I think it's 15 -- it goes onto 15 with the signature page and then has a couple of appendices.

Q. All right. One of the things that's in the -- the draft of the separation and release agreement that was sent to Mr. Daugherty is a clause 7 called, use of confidential information. Do you see that?

A. You mean not the one sent to him on his employment agreement, you mean this one?

Q. Correct. Exhibit 41, the version that was given to him around the time that he issued his resignation notice, okay. Paragraph 7 in there is a use of confidential information provision, correct?

A. I see it, yes.

Q. And that clause isn't found anywhere in Exhibit 11, the form of separation and release agreement that was attached to Mr. Daugherty's employment agreement, correct?

A. I don't know.

Q. Go ahead and take a look at Exhibit 11 real quick.

A. You mean Exhibit A.

Q. Exhibit A to Exhibit 11, correct.

A. I don't know what the other one says, but paragraph 5 is a confidentiality provision.

Q. Confidentiality provision? Okay.

What about a --

A. Paragraph 6, I'm sorry. Paragraph 6 is a nondisparagement disruption --

Q. A nondisparagement provision. But does it say confidentiality?

A. Paragraph 5 seems to be confidentiality, because it says, confidentiality requirement.

Q. All right. What about -- well, that's with respect to the agreement, correct?

A. They're definitely different agreements.

Q. Definitely different agreements.

A. Yeah, they're --

Q. Okay. Fair enough.

A. One's next to the employment agreement that he had.

Q. All right.

A. And the other one was part of the negotiations that he was having with Dondero when he left.

Q. All right. So let's then move on to something else that you testified about with respect to Section 4.5 in Mr. Daugherty's employment agreement.

So, again, let's stick with paragraph -- I'm sorry, Exhibit 11, Highland's Exhibit 11. Go to Section 4.5.

A. Yes.

Q. And do you agree with me that on Section 4.5 in the first sentence it states that in the event that the

executive, and the executive there refers to Mr. Daugherty; is that correct?

A. That's correct.

Q. Terminates his or her continuous status as an executive hereunder and within one year thereafter the executive is not employed by a competing business, the company shall have no further liability or obligation to the executive under this agreement, or in connection with his or her employment hereunder except for -- and there are a number of exception clauses there; is that right?

A. There are, yes.

Q. One of which is clause 3, any amounts or rights to which the executive is entitled under any other written agreements with the company?

A. That's correct.

Q. Okay. And, in fact, the part at the bottom of Section 4.5 that you were discussing with Mr. Morris earlier, that last sentence says that if the -- in the event that the executive does not sign the form of separation agreement and release that's attached to his employment agreement, he's not entitled to any severance; isn't that right?

A. It says well more than that.

Q. In the last sentence of that paragraph? It says he'd not be entitled to any severance and the company will have no further liability or obligation to the executive

under this agreement, correct?

A. Or in connection with his or her employment or termination.

Q. And you don't think that relates back to the severance provision right above it, the severance sentence right above it?

A. I read that to roll over that provision, yes. That if you don't sign the separation agreement, you don't get anything.

Q. Do you agree that Mr. Daugherty had a written agreement in terms of his compensation and benefit statement with Highland?

A. No, I do not agree.

Q. You disagree with that?

A. That's not an agreement, no.

Q. It's not an agreement?

A. No.

Q. Okay. You mentioned earlier that Mr. -- or that Highland had fully satisfied its obligations under the compensation and benefits statement. And how is that?

A. To the extent -- we believe it's not an agreement because it's indefinite. It's vague. And it's missing essential terms to form an agreement. To the extent that someone, meaning the Court, determines that there is an agreement, Highland will satisfy it.

Q. How so?

A. Highland passed through more than $4 million of losses to Mr. Daugherty for 2008 tax year as a partner at Highland. He used those losses on the K-1 that he got. He actually filed it on the draft, but the final K-1 is the same. He actually got more than originally contemplated. He used those losses -- those losses that Highland had on his tax return to generate refunds. Those refunds gave him refunds of taxes previously paid that were distributions that Highland made to him, which is why Highland could calculate how much he would get back. And those were tax distributions that he'd gotten as a partner in prior tax years.

Q. All right. So let's break that down for a second. In terms of the allocation to Mr. Daugherty from Highland's overall partnership losses, on Highland's partnership tax return that was done in 2009, correct?

A. You get your -- your taxes are done on a calendar year.

Q. Right.

A. And the losses were generated in 2008.

Q. And reported in 2009.

A. The losses are generated in 2008. Under the partnership agreement Mr. Daugherty was entitled to a percentage or an allocation of profits or losses. Those losses for 2008 are reflected in his K-1. That K-1 is

delivered in 2009 for the 2008 tax year.

Q. Okay. So the K-1 was delivered in 2009, which allowed Mr. Daugherty then to file the tax return which is, to simplify things, allowed him to receive, as you put it, a refund on his tax return for the 2008 year?

A. Not as I put it. He stipulated in the joint pre-trial order.

Q. Yeah. So what that -- just to be clear, though, all of that happened while Mr. Daugherty was still employed at Highland, right?

A. It all did happen while he was employed. But it would not have made a difference because it was under the partnership agreement. If he resigned on January 1, 2009, he would have gotten the same allocation of profits and losses.

MR. YORK: Ms. DeBerg, would you pull up Daugherty Exhibit 14 for me?

Q. The tax refund was listed on Mr. Daugherty's compensation and benefit statement that year as part of his earnings and awards, correct?

A. Yes. It is listed there, yes.

Q. And what you've characterized as a bonus, correct? You've talked about it as a bonus in this case. Mr. Morris has referred to it as a bonus, right?

A. Wrong. Mr. Daugherty in your pleadings characterized it as a bonus. We've said, fine, if you want

to call it a bonus, then this provision applies. I don't believe it's actually a bonus. When you have a bonus, it usually says it's a bonus. And if you could find bonus on this piece of paper, then I'll pay you a quarter.

Q. Find the word bonus on here?

A. Yeah.

Q. Actually it's right below that loan forgiven in 2009 as part of bonus.

A. There you go. You got a quarter.

MALE SPEAKER: At a boy.

THE COURT: I was going to say something too, but --

MALE SPEAKER: You can't play. You can't play.

THE WITNESS: I owe Mr. York a quarter. Not in that section, but it does show up on the page, I guess.

Q. But you'd agree with me that in terms of the mechanics of the filing of the tax return by the partnership and the allocation of Mr. Daugherty, all of that happened while Mr. Daugherty was still employed at Highland, correct?

A. It did. But, again, his allocation of profits and losses when he quit, he was a partner. He would have had a tax return for 2011. He wouldn't have gotten a K-1 for 2011.

Q. That's not my question.

A. Even though -- you just asked -- it doesn't matter

if he was employed. But, yes, he was employed.

Q. You've argued on the stand as part of your testimony that under Article or Section 3.1 of his employment agreement he had to be employed at the time that the bonus was to be paid, right?

A. I've read that section, correct, yes.

Q. And he received this compensation here under his compensation benefit statement while he was still employed at Highland, correct?

A. He did get the refund while he was still employed at Highland, yes.

Q. Subject, of course, to the fact that it could be audited by the IRS, right?

A. Always.

Q. All right. And by the way, was it Mr. Daugherty's idea to implement this compensation through this tax refund?

A. I don't know if it was his idea or somebody else. I have no idea whose idea it was.

Q. Right. Because you weren't at Highland at the time, right?

A. Nope. No, I was not.

Q. You also testified that Mr. Daugherty had the money for 17 years. Do you actually have any personal knowledge as to what happened to the refund that Mr. Daugherty received on his 2008 return?

A. Yes.
Q. What happened to it?
A. He received the money.
Q. Yeah. And I'm asking after that, what happened to it? Do you have any personal knowledge as to what happened to it after that?
A. What he did with the specific money?
Q. Yes.
A. I mean, money's fungible. I have no idea what he does with his money.
Q. All right. Let's turn to the estimation issue for a second. We've talked a lot about the fact that Highland believes that this can be -- this claim that Mr. Daugherty has can be estimated. And I believe in your direct examination, excuse me, you testified that the IRS refund claim came up in the context of valuing Mr. Daugherty's overall claim for voting purposes in this bankruptcy case in March of 2020. Do you recall that?
A. I don't believe that's what I testified to. It may have, but I don't recall specific discussion around this part of his claim in respect of the estimation in the winter -- end of the year of 2020. I just don't recall.
Q. Do you recall participating, maybe not actively, but at least listening to the hearing in front of Judge Jernigan regarding how Mr. Daugherty's claims overall should

be valued for purposes of voting?

A. I'm not quite sure I understand the question. But there's a Webex, but did I -- because it was during COVID, did I -- did I participate? Yes. I definitely was involved. I don't remember if I testified at that hearing or not.

Q. And Mr. Morris was present and participated in that hearing?

A. I'm sure he was.

Q. All right. Do you recall that Mr. Morris informed the Court that Mr. Daugherty's IRS reserved claim was something that could not be calculated?

A. I don't have a specific recollection of what happened in his estimation for voting purposes.

Q. All right.

MR. YORK: Ms. DeBerg, would you put up Daugherty Exhibit 36, please? And if you'd go to page 81, please?

Q. So we're looking here at page 81 of Exhibit 36. This is the transcript from that hearing, Mr. Seery. Mr. Morris starts talking in closing arguments there at line 8. Do you see that?

A. Yes.

Q. And at line 12 he says, We don't believe 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.

Did I read that correctly?

A. I believe so, yes.

Q. All right. Did you know then that the Court, Judge Jernigan also said that it wasn't something -- this portion of Mr. Daugherty's claim could not be calculated or estimated for purposes of voting?

A. No. They don't.

MR. YORK: Let's go to page 85 then, Ms. DeBerg.

Q. Starting at line 12. They're discussing the math with respect to Mr. Daugherty's claim. And about line 13 -- or excuse me, line 12 there it says, So what else in that chart gives me pause? She says, The tax refund, the 2008 tax refund component. She says what the number is. And then on line 15, 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 that a result is appropriate. I don't know. And then -- so what she does is if you go down further at the beginning at line 24 she begins subtracting amounts, which includes the 1.475 million and the estimated interest associated with the IRS tax claim.

Do you see that?

A. I do. But I feel like the bonus thing, you missed the whole part of that estimation.

MR. YORK: And then go to the next page, please, Ms. DeBerg.

A. She just said that we may get to a point where we have to do estimation. I feel like you should all pay me that quarter back.

Q. And so she says there that she's thinking about deducting and she ends up deducting that out of it at the end of the day. Do you understand that?

A. I don't recall exactly. The claim had so many components. But clearly this is dealing with the tax component. Judge Jernigan says that I may get to the point where I have to estimate it. But she didn't want to do it at that time. That's the previous page. And it looks to me that she just deducts the amount that was in the proof of claim. But I'm not -- I'm not really sure.

Q. Well, I'm sure the Court can look back at the transcript, if it wants to.

But let me go to another issue. You talk about that there could be undue delay as a result of this claim if this isn't resolved with an estimation now. Do you remember that?

A. That's correct, yes.

Q. And you talked about how, I believe but I want to make sure I'm correct, but that the claimant trust agreement

has -- it's been extended twice; isn't that right?

A. Yeah. Pursuant to its terms it had a three-year initial term and there was a possibility of two, could have done it at one time or two separate ones. We got two separate extensions of one year that were built into the claimant trust agreement.

Q. And Mr. Daugherty's, this remaining claim is the only claim that remains outstanding in the Highland bankruptcy; is that right?

A. That's right. We would hope to get done with this and dissolve the claimant trust and work to just close this thing down now after six plus years.

Q. Okay. But it's possible you could get Mr. Daugherty's approval to extend the claimant trust agreement further, correct?

A. I don't think it's up to Mr. Daugherty.

Q. You could -- you could ask for his permission to do that as the remaining claimant, correct?

A. Could do a lot of things, but it doesn't have the affect of modifying the plan, modifying the claim and trust agreement, dealing with other beneficiaries who have already received distributions and could be negatively affected by it.

Q. The parties -- the parties could agree to it. Obviously it's subject to Court approval. I get that. But

that's something that the parties could do and seek Court approval, right? Fair?

A. No, I don't believe so. I think modifying a confirmed plan is a very difficult thing. It's not just a couple of parties coming in and saying, hey, we'd like to modify this plan. Move on. That's just not how the Bankruptcy Code works.

Q. So then let's talk about undue delay again. So Strand is the tax matters partner handling this for Highland, correct?

A. That -- it's a -- we touched on this earlier. Strand is the tax matters partner, full control and authority over the matters related to the pre-petition Highland. We, Highland reorganized, don't have any authority, don't have any visibility, don't have any liability. This is a limited partnership pre-- slight change in the Tax Code. So nothing affects Highland, even pre-petition Highland. It doesn't pay any taxes. It goes to the partners.

Q. Well, isn't there a period in time before the, I think it was the plan was approved, fully aware the independent board of Highland -- I'm sorry. Strike that. Let me back up.

Wasn't there a period of time when the independent board of Highland was in control of Strand?

A. That's correct, yes.

Q. Which included you, correct --
A. That's correct.
Q. -- on board?
A. Yes.
Q. And so the independent board of Highland could have worked through Strand to resolve the IRS audit dispute, couldn't it?
A. It's a good question. We definitely did have Hunton and they were Highland's counsel at that time, because Highland was in bankruptcy and Highland -- and Hunton was handling the negotiations with the -- the IRS. And I don't know if we could have just rolled over and taken the IRS' offer. We certainly would have been sued by Mr. Dondero. Now I'm pretty sure we would have been sued by Mr. Daugherty, as well. So I don't think we ever thought of that. I'm totally speculating. But I know we didn't think of it as we could just accept the audit, the completed audit result and go. But, frankly, at that time I don't think I knew the audit was actually done, too.
Q. But there was a period of time of approximately two years where that was within the control of Highland's independent board?
A. The independent board controlled the tax matter partner, yes.
Q. Okay. Let's go to HERA and ERA and the books and

records real quick.

So Mr. Morris asked you a number of questions about who -- or whether HERA had its own servers, own email domains, stuff like that and you answered, no to all those questions. Do you remember that?

A. That's correct, yes.

Q. And so all of the business in terms of communications or documents relating to HERA and ERA were maintained on Highland's servers; is that fair?

A. There was no business. There was assets that were owned at HERA and then there were Highland employees that were the beneficiaries, if they had vested. And there wasn't a separate business. But if there was something that had to be done like keeping the financials updated, those were maintained, as I said, in QuickBooks, not on Highland's system. But they were maintained by Highland employees.

Q. So are you contending, as you sit here today, even though you weren't at Highland at the time, that there were no email communications that went back and forth amongst Highland employees that were handling certain matters with respect to HERA or ERA?

A. No. They're not HERA and ERA's emails. They're Highland emails.

Q. But they related to HERA and ERA, right?

A. Just as if my lawyers have emails amongst

themselves, they're not my lawyers -- they're not my emails, they're about me.

Q. And who was the manager of HERA at the time?

A. The manager of HERA at the time before ERA was a board of directors of HERA that, for at least some period of time, Mr. Daugherty was on.

Q. And also Mr. Dondero, correct?

A. I don't think Dondero was a member of the board of HERA. I'm pretty sure he wasn't.

Q. What about other Highland employees?

A. Yeah, there were only Highland employees. They were the beneficiaries. So the ones who would get whatever the benefit from that vehicle was going to be.

Q. What about litigation that HERA or ERA was involved in? Was that being handled by any in-house counsel that were employed by HERA or ERA?

A. No.

Q. Was it being handled by in-house counsel that were employed by Highland?

A. Certain Highland employees would have been involved in that. But outside counsel would have represented HERA. Highland employees only worked for Highland. Meaning as that's who their duty would lie to.

MR. YORK: So let's go to the settlement agreement. Let's go to Highland 5, please.

Q. Go to Section, I think it's 8.
A. Yes.
MR. YORK: Ms. DeBerg, thanks.
Q. All right. We talked about that there would be a transfer of interest with respect to HERA and ERA, correct, as it's written in the settlement agreement?
A. That's correct.
Q. Okay. The term interest there is not a capitalized term, is it?
A. It's a term of art that anybody who deals with corporate forum knows what it is.
Q. It's not a defined term either, is it?
A. No. It's what everybody would know it would mean.
Q. Okay. In fact, the -- in HERA and ERA the ownership mechanism was through something called units, wasn't it?
A. There was -- I testified before, yeah, there are two kind of units and it depended on whether people vested.
Q. Right. So let's go to Exhibit -- Highland Exhibit 52.
So we first have the transfer agreement that's with respect to ERA; isn't that correct? Highland ERA Management, LLC, which we shorthanded as ERA here, correct?
A. That's correct.
Q. Which it uses the capitalized term in this transfer

agreement of interest, correct?

A. That's correct.

Q. Which it refers back to the membership interest, correct?

A. That's correct.

Q. And then on the next page, or the next document there, the transfer agreement with respect to HERA, it uses the capitalized term, interest, correct?

A. That's correct.

Q. That refers to common -- outstanding common units of HERA and also Series A preferred units of HERA, correct?

A. Yes.

Q. And by the way, neither of these transfer agreements contains any provision acknowledging or agreeing by Mr. Daugherty that Highland has fully complied with its obligations to transfer all of the interest, including the books and records of HERA and ERA to him under the settlement agreement, correct?

A. These agreements only deal with the transfer of the membership interest. I don't believe they have any kind of release in them.

Q. And, in fact, the purpose of the settlement agreement was to transfer these, quote/unquote, interests as it's in the settlement agreement to Mr. Daugherty for the purpose of facilitating potential claims against former

Highland executives and employees, correct?

A. No. The purpose of the settlement agreement was to settle his claims against Highland.

Q. I apologize. I mis-spoke then. The purpose of the transfer of the interest as it's written in paragraph 8 of the settlement agreement is to facilitate the prosecution, or the potential prosecution of claims against former Highland executives and employees, correct?

A. I don't know if it said exactly what they were against. But it was certainly he thought he could bring claims against at least Dondero and Okada is what I understood it to be. And he wanted to use this entity to try to do that because he previously sued this entity and he thought based on that jury trial verdict that he still might be able to do something with the entity.

Q. Okay. I just want to be clear. Are you -- are you agreeing or disagreeing that the purpose of the transfer of the interest, which included HERA and ERA books and records was to facilitate the recovery of those potential claims?

A. Yeah. You asked me about executives. And it doesn't say anything about who's he going to go sue.

Q. Okay. Now you said that you had concerns about the cost associated with gathering this information. And that was conducted by Mr. Klos and Mr. -- is it Cortoware (phonetic)? Did I pronounce that correct?

A. Cornway, according to -- Conaware (phonetic).

MALE SPEAKER: Ivan Conyia (phonetic).

A. I'm sorry, that was just the Seery, when I asked Seery it says Cornway. But, no, he's Conaware.

Q. The searches for the HERA and ERA materials were conducted by Mr. Klos and Mr. Conaware, correct?

A. Conaware. I don't know if Mr. Conaware participated in that. I don't recall.

Q. Okay. Were these searches something that were -- I mean, Mr. Klos, I assume he's a salaried employee, right?

A. He does get a salary.

Q. And you didn't pay an outside vendor to conduct any of the searches, right?

A. No, we did not pay an outside vendor to conduct any searches.

Q. And you would agree with me, if you turn to Exhibit 53, Highland Exhibit 53, this is my letter dated January 30th of 2024. Let me know when you get there.

A. Yes.

Q. First off, at the very first line of the second paragraph on the first page I say, As Mr. Daugherty and Mr. Seery discussed last summer, Mr. Daugherty and HERA appreciate the documents Highland has provided to date.

Do you see that?

A. I see it.

Q. All right. Do you agree that at some point in the Summer of 2023 you and Mr. Daugherty had a conversation that related to the HERA -- the materials that Highland had provided about HERA?

A. I don't think that's true.

Q. You don't think that's true?

A. No.

Q. Okay.

A. I can tell you why, if you want me to.

Q. No. Hang on. I want to go to the next part.

I then go down and identify that there were email correspondence involving HERA's in-house counsel. And I identified them by name with outside legal counsel at various firms, as well as other email exchanges regarding the transfer of assets, allocation of expenses, et cetera, et cetera, et cetera as I go down there. And a demand was made for Highland to provide that information.

Do you see that?

A. Yes. It generally -- generally I see what you're saying.

Q. And to be clear as we looked at in Mr. Morris' response which was Exhibit, I believe, 54, Highland refused to do so, correct?

A. Yeah. You were asking for what you called in-house counsel at HERA. They were Highland employees, not HERA

employees. Then you were asking for not books and records, but you were asking for emails which are not produced, metadata, native format, the pdf -- you certainly weren't asking for books and records. But I do see that.

Q. That's the way you interpreted the agreement?

A. That's the way I'm reading your letter.

MR. YORK: Just one second, Your Honor. Your Honor --

Q. Mr. Seery, you mentioned earlier that it was Mr. Daugherty who was characterizing the tax refund as a bonus. Do you remember that?

A. That's in your pleadings, yes.

Q. All right. Are you aware that Highland in Mr. Daugherty's prior state court litigation had characterized the tax refund as a bonus under the category of bonus?

A. I'm not aware of that.

Q. Okay. I'm going to -- let me show you. I only have an electronic copy. I'll represent to you, Mr. Seery, that this is what was marked by Highland as Exhibit 131 in that trial. And it's a summary of Mr. Daugherty's compensation. Do you see that?

A. Yep.

Q. And there's a category called bonus on here. Do you see that?

A. Yes, I see it.

Q. And then it's got four subcategories underneath bonus which is bonus, spot bonus, tax refund, and loan forgiveness. Do you see that?

A. Yep.

Q. And in 2000 -- February of 2009 for Mr. Daugherty the tax refund under bonus it has the $1.475 million number, the same one that's on his compensation of benefits statement, right?

A. I believe that is, what, 2013, yeah. Something like that.

Q. Yep. For 2009.

A. I don't know if I've ever seen this document before.

Q. You've never seen this before?

A. I don't know.

Q. Okay.

A. I just don't specifically recall that one.

THE COURT: Hold on one moment, Mr. York. Okay. I just wanted to make sure that the record picks it up.

MR. YORK: Sorry.

THE COURT: No, you're doing fine. It was -- I'm not blaming Mr. York. But because he was closer over there, he wasn't in front of a microphone.

MR. YORK: Apologies, Mike.
THE COURT: Okay.
MR. YORK: Your Honor, I'm going to move to admit this as, I believe it will be Daugherty's 99. And I've got -- we'll get an electronic copy uploaded after the hearing.
THE COURT: Can you tell me what it is?
MR. YORK: It is -- I'll describe it as it was -- it's a summary of Mr. Daugherty's compensation while he was at Highland that was marked by Highland as an exhibit in the prior state court action between Highland and Mr. Daugherty.
THE COURT: And it was -- what was the exhibit? It was an exhibit in what?
MR. YORK: In the prior state court litigation between Highland and Mr. Daugherty.
THE COURT: Go back over in front of the microphone, please. I've got some more questions.
MR. YORK: Sure.
THE COURT: Is this a Delaware case? Is it Texas?
MR. YORK: Texas.
THE COURT: But not before this Court?
MR. YORK: Correct. It was in state court.
THE COURT: Okay. Mr. Morris?

MR. MORRIS: Why wasn't this on their exhibit list? They objected to our documents in the Texas state court matter and now they don't put them on their exhibit list and they're offering them in the middle of a hearing?

MR. YORK: I'm offering it simply as impeachment to his testimony earlier that it's -- we're -- saying we're the ones characterizing it as a bonus. Highland is the one who characterized it as a bonus back then.

THE COURT: Okay.

MR. YORK: Which by -- sorry.

THE COURT: You've seen the document, correct, Mr. Morris?

MR. MORRIS: I've seen the document.

THE COURT: And they've shown you on the screen?

MR. MORRIS: It's fine, Your Honor. Objection withdrawn.

THE COURT: Okay.

Daugherty's Exhibit 99 will be admitted.

MR. YORK: All right. Your Honor, pass the witness.

MR. MORRIS: I have nothing further, Your Honor.

THE COURT: All right. I do have some questions for your, Mr. Seery. And forgive me, these are

probably going to be some really basic questions that you're probably going to be going, what's going on? But --

THE WITNESS: It's six years.

THE COURT: -- please understand, I haven't had this case.

THE WITNESS: I understand, Your Honor.

THE COURT: So one of the things that I'm trying to understand as it pertains the claimant trust and Highland Capital Management, my first question is this, is Highland Capital Management still operating?

THE WITNESS: Yes. So very, very minimally, but we still are operating. So we -- the employees who were listed on the release, which I'm at the top of Mr. York showed previously and Mr. Daugherty is (inaudible word). Those were the -- there had been 75 employees, roughly, at Highland. That was the team that I selected and took to be the reorganized Highland. And that was -- I didn't need 75 folks. I needed 13 really good ones. And so that's the group that took over to manage these assets, manage claims, and there were a lot of assets. And we've done that now for six years and have been incredibly successful in making distributions.

The plan was reorganization of Highland and then a claimant trust would sit above it. All the claims would get converted to different classes of trust interests in this

liquidating trust. The ones for our purposes that are important is Class 8, general unsecured, Class 9, which is the subordinated class that we sort of put in place for iffier claims, if you will. Because we -- they were much more speculative claims and much more speculative recovery. And then Class 10, which was senior unvested contingent partnership interests. Those go to Hunter Mountain Investment Trust. And then Class 11, which is senior -- or subordinated partnership interests that are also contingent, unliquidated, unvested. But they're now liquidated because we had a hearing on it.

We have since wound down almost all of the assets. And we have along the way reduced the size of our team so that we have a much smaller team now that we're holding together. It's really just four of us left. And we're down to pretty minimal assets that we can manage. We have claims we have to still pay off, but we have money in the indemnity trust to do so. And we'll be winding down and dissolving the claimant trust by August 11th. And then we'll only have an entity that can continue and that's the indemnity trust. So we hope to have all of the claims resolved. If Mr. Daugherty's claim is disallowed, then there will be no payment on it. If it's allowed and then estimated for some amount, there will be a payment on it that's fully reserved. He'll get his payment. We'll be done. A prerequisite to dissolving the claimant

trust is that all claims are resolved. And this is the last one. So once that's done, we'll basically be winding everything down.

Now we do -- we'll probably still have appeals with Mr. Dondero, because that's just the nature of it. But that will be funded and handled by the indemnity trust. And the claimant trust will ultimately go away.

THE COURT: Okay. The funds that will -- let me rephrase that.

Assuming that the Court estimates a claim and that claim was estimated for an amount less than the reserve, the funds that are remaining after the payment of that claim from the reserve, where do they go?

THE WITNESS: So they'll be used to continue the operations, the wind-down operations. There's always required to keep somebody around to turn off the lights, including dealing with the tax man who has to -- we have yet to file final returns. Then ultimately those will go up to the indemnity trust. To the extent that the indemnity trust doesn't have any more indemnification obligations that it has to deal with, and that really has to address a lot of, frankly, litigation that you'll hear more about in a few weeks, then it ultimately will get distributed to Hunter Mountain Investment Trust which is the Class 11 holder. There's a little piece that's owned by an entity called H

Clom (phonetic), which Dondero owns, but has really no rights and just a right to some distribution. So ultimately if, frankly, it's me as the indemnity trust administrator, I'm completely certain that there's no liability for anybody who might be indemnified or any entities that might have been indemnified, then we'll start making distributions to Hunter Mountain Investment Trust.

THE COURT: Okay.

THE WITNESS: And they have a $320ish million claim. There's about $45 million that ultimately could get distributed to them.

THE COURT: Okay. And so once that is done, the claimant trust has been dissolved. The indemnity trust gets dissolved.

THE WITNESS: Ultimately indemnity trust would get dissolved, yes.

THE COURT: And Highland Capital Management dissolves, as well?

THE WITNESS: Yes.

THE COURT: Okay. I just couldn't understand. And forgive me, I just wasn't for sure if we actually had an ongoing operation that was doing similar things that Highland was doing before and just now we have a reorganized debtor. But it was always a liquidating plan and a liquidation termination where a ceasing of all -- all of Highland, the

pre-petition Highland?

THE WITNESS: Correct. And there is no -- there will be no post-petition Highland going forward. It's a liquidating plan where every asset will be gone, every claim will be paid. And then ultimately the only thing left will be the indemnity trust to indemnify unfortunately people like me.

THE COURT: Okay. You had testified earlier that the independent board did actually control the tax matter partner. When did that change? Did that change upon confirmation?

THE WITNESS: Effective date.

THE COURT: Oh, the effective date of the plan.

THE WITNESS: So we -- we -- the independent board was actually appointed as the board of Strand with control over the debtor because of the LP structure and Strand was the GP. And so it was a little bit of an awkward structure any way. I think we could have done it differently in hindsight, but that's the way it was set up. And that litigation with the IRS, as I said, the audit took seven years. And then the litigation has been going on since then. And unfortunately, Your Honor, you'll find that the litigation continues.

THE COURT: Okay. I believe that's the

questions I have. Either side is welcome to have any questions based on what the Court asked.

MR. YORK: No, Your Honor. Thank you.

THE COURT: All right.

MR. MORRIS: No further questions, Your Honor.

THE COURT: All right.

THE WITNESS: Thank you, Your Honor.

THE COURT: You may step down. Thank you.

MR. MORRIS: So Highland calls Mr. Daugherty.

THE COURT: Let me ask this question. Maybe I should have asked this beforehand.

I'm assuming that these are similar witnesses that we would have had for both sides. And so, Mr. York, are you intending to recall anybody, or are you all handling what would be your direct and cross at the same time?

MR. YORK: The latter.

MR. MORRIS: Yes.

THE COURT: Okay. So we're not planning on once you are finished with Mr. Daugherty, okay, now Mr. York is ready to call him back up on the stand or anything like that. Okay. I just wanted to make sure. That's what I figured. I just wanted to make sure. Because as you guys know, we're getting closer towards the end of the day.

MR. MORRIS: Yeah. I'm going to try and cut this down, to the extent that I can.

May I proceed?

THE COURT: You may proceed.

MR. MORRIS: Good afternoon, Mr. Daugherty.

MR. DAUGHERTY: Hello.

MR. MORRIS: You were employed by Highland from 1998 to 2011, correct?

THE COURT: I'm sorry, thank you. We haven't sworn Mr. Daugherty in. I'll let my law clerk take care of that. I do understand he is an attorney -- if I'm not mistaken, he's an attorney. But we'll still have him sworn in.

(The witness was sworn by the Court's law clerk.)

THE COURT: All right. You may proceed now, Mr. Morris.

MR. MORRIS: Okay.

PATRICK DAUGHERTY

The witness, having been duly sworn to tell the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. MORRIS:

Q. Mr. Daugherty, you were employed by Highland from 1998 to 2011; is that correct?

A. That's correct.

Q. And you entered into an amended employment agreement dated as of December 31st, 2004, correct?

A. I don't remember the dates, but there was an employment agreement.

Q. I think you have our binder there. If you could just go to Exhibit 11. Can you just confirm that that's the employment agreement, the last employment agreement that you had at Highland?

A. I'm sorry, where are you telling me to look?

Q. 11.

A. 11. Yeah. This is the employment agreement that I was operating under.

Q. Okay. And that's -- do you recall that in late September 2011 you resigned?

A. Sounds about right. I think September 28th.

Q. Okay. If we can go to Exhibit 12, the next exhibit. Is that your resignation letter?

A. Yes.

Q. Okay. And to the best of your recollection, the employment agreement that we just looked at that is Exhibit 11 was the employment agreement that was in effect at the time of your resignation, correct?

A. As far as I know.

Q. Okay. And do you recall that attached to the employment agreement was that form of release and separation agreement that was attached as Exhibit A?

A. It was -- I'm sorry, what was that attached to?

Q. Attached to your employment agreement.
A. Are you talking about historically?
Q. No, no, no. Let's take a look at Exhibit 11. I don't want to rush this. I apologize for that.
So 11 is the employment agreement that was in effect at the time of your resignation, correct?
A. Yes. 11 was in effect, as I understand it, at the time I resigned.
Q. Okay. And the last --
A. However, my resignation wasn't effective as of 9/28.
Q. And when was it effective as of?
A. I think they made it effective late October, October 30th, because they tried to convince me to come back.
Q. And you didn't come back, correct?
A. I did not.
Q. And attached to the employment agreement is Exhibit A, the form of separation agreement and release, correct?
A. Yes.
Q. And you never signed that, correct?
A. I was never given the opportunity to sign that.
Q. Okay. But it was attached to your employment agreement and you had a copy of your employment agreement?
A. I did not have a copy of my employment agreement.
Q. You received K-1s during the time that you were at

Highland; is that correct?

A. Yes.

Q. Okay. At the time that you left in 2011, to the best of your knowledge, none of Highland's tax returns were subject to an audit, other than the 2008 tax return at the time of your departure, correct?

A. I don't think that's true. I think the 2005 was subject to an audit at that time.

Q. And did that have any impact on you?

A. There's ultimately a resolution that came from the IRS. I can't -- you know, they sent me a letter saying it was resolved in some manner. I can't remember what it was.

Q. And it's certainly not part of your claim today, correct?

A. It is not.

Q. Okay. And as you sit here today, you're not aware of any of Highland's pre-2011 tax returns that are subject to an audit today, correct?

A. I can't say that. No, there's 2008, '07, and '06.

Q. Are all three of them subject to an audit?

A. As I understand it.

Q. Okay.

A. When you guys did the -- when Highland did the 2008, well, they did the maneuvers in 2009 for the 2008 period, there was some second version of this that went

through where they had to restate 2007 and '06.

Q. Only your 2008 federal income tax return -- withdrawn.

Your 2008 -- your own personal 2008 federal income tax returns are not being audited, correct?

A. That is not correct. The IRS has reserved the right to look at all of it. They made that point to me on multiple occasions.

Q. Have they identified -- so you filed this in 2009, right?

A. I did.

Q. We're in 2026, correct?

A. Yeah.

Q. In the 17 years since you filed your returns has the IRS identified any, anything about your personal 2008 income tax returns that they're reviewing?

A. They just noticed to me that everything in the return is still under review, pending resolution of this other matter and its affect on the rest of my return.

Q. Okay. I'm going to ask you the question again. Has the IRS identified anything with respect to your 2008 reviewing the last 17 years that you understand to be under review?

A. I'm sorry, I want to make sure I answer it. Could you give me that one more time?

Q. In the 17 years since you filed your 2008 returns, has the IRS identified any aspect of your return that they are reviewing?

A. No. They have not been specific on anything.

Q. Okay. You're aware that in December 2017 the IRS field audit -- apologies. You're aware that in December 2017 the IRS field office concluded their audit and proposed adjustments to Highland's 2008 income tax returns, correct?

A. I don't think that's fair. I think I was made aware of it through this process. But I -- I can't say that I thought that I was aware that they completed their audit. I never dealt with the IRS about it, so I can't say specifically what the IRS determined.

Q. But that's what you were told by Highland in 2018, correct?

A. Yeah. I was told by Brian Collins, the HR director at Highland who was not the tax partner for the partnership.

Q. Okay. And Mr. Collins told you specifically that the IRS field audit had -- the IRS field examiners had completed the audit, correct?

A. He sent me a couple of communications. I'd be more comfortable if you'd just show me what they were, because I want to make sure we get this right.

Q. Sure. Exhibit 60.

A. All right. So you're asking me about 2017?

Q. Let's just -- this is an email that Mr. -- this is a letter that Mr. Collins sent to you by regular mail and email in February 2018, correct?

A. That is correct.

Q. And he told you in this email that a team of IRS field examiners had conducted and audit of Highland's 2018 returns, correct?

A. Yeah. I thought you said final before.

Q. Is that correct?

A. It doesn't say, final. It says, conducted an audit. So I agree with that that this was sent to me. I don't know if they really did or not.

Q. And in the last sentence he told you the exam, meaning the IRS field examiners, concluded their audit and have proposed an adjustment to the 2008 return, correct?

A. Are you reading in the last paragraph?

Q. The last sentence of the first paragraph.

A. Oh, I'm sorry.

It says, Exam concluded their audit. Am I reading that right?

Q. Yes.

A. Exam concluded their audit and have proposed an adjustment to the 2008 return. You said IRS. It says exam. I'm just reading off your letter here.

Q. It's not my letter, it's Mr. Collins'. But exam is

a defined term in that --

A. When I say, you, I'm sorry, Highland Capital is who you're here to represent.

Q. Yeah.

A. So, yeah, Exam concluded their audit and have -- it says that. I'm not exactly sure what that means.

Q. Okay. And you understood at the time from the documents that Mr. Collins provided to you that Highland had shown that your allocable share of the adjustment was about $1.257 million, right?

A. You're saying I got that from this, no.

Q. Well, he included Form 886Z, right?

A. I don't know. Did he? It's not on here. Are you talking about for February 3rd, 2018?

Q. Yeah. He refers to the -- he says --

A. He's referring to it, but you're saying what it says and I don't see the document. I can't tell you what it says.

Q. Okay. Turn the page to Exhibit 17.

A. Okay.

Q. And if you look at the bottom right corner ending in Bates number 31, that has the same number that I just read, right? He provided you with Form 886 that showed your allocable share of the adjustment was approximately $1.257 million, correct?

A. For this particular issue, yes.
Q. Okay. That's -- what do you mean, this particular issue?
A. Well, as I mentioned, there's 2008, 2007, and '06, and there were multiple issues going on, as I understand it.
Q. That's not part of your proof of claim, is it?
A. I'm not sure what you're talking about.
Q. Your proof of claim only deals with 2008, correct?
A. Well, I think you're taking it out of context. And I understand why you are, because you weren't there. But in 2008 they made these elections, okay. But the way to get to the refund -- I'm sorry, in 2009 they made the elections. It impacted 2008. But the way they made the elections also impacted 2007 and 2006. So when I say I'm here for the tax refund, the tax refund I got in 2009 for what was filed in 2008, but as I said, they had to go back and restate '07 and '06 to try and capture some of the stuff, and I use that term loosely, some of these elections through these other entities going back tax years.
Q. Sir, can you go to Exhibit 15, please?
A. Yeah.
Q. Do you see that the adjustment that is proposed is approximately $166 million?
A. I see that this adjustment for this particular issue is 166.3 million, yes.

Q. Okay. And so the total corrected amount should be $169 million plus change?

A. I'm not -- I see that there's a corrected that says 169.9, yeah. I don't know what that's for.

Q. And do you see at the top of that column it says, period end 12/31/2008?

A. Where am I looking?

Q. Just above those numbers there it says, period end 12/31/2008.

A. Yes, I do see that.

Q. Okay. And then if you flip back to the document that was given to you, Exhibit 17, the page ending in 31, that is our allocable share of the corrected number, correct?

A. I don't know. Is that listed on there? Are you just -- I don't know if that relates to the other or not.

Q. Okay. If you go to the next page that $169,902,949 --

A. Can you slow down a second? Okay. I'm on 18.

Q. 17.

A. Sorry. Okay. I'm on 17 and I see a 1.257 number. Is that what you're talking about?

Q. Sure. That's your allocable --

A. With my Social Security Number, which I prefer us not to be making this public.

Q. That's -- the document's been filed under seal.

A. Oh, thank you.

Q. Okay. The -- you understood that the 1.257 number was your allocable share of the total corrected adjustment, correct?

A. I did not.

Q. You didn't?

A. No.

Q. Did you understand that the allocation reflected in this document pertains solely to December -- the 2008 income tax return?

A. I did not. As I told you, I didn't see this document for the first time until when we did our deposition. So I don't know what it pertains to and what it's limited to.

Q. Okay. You received refunds from the IRS of previously paid taxes in the aggregate amount of $1,273,930 related to your 2008 tax returns, correct?

A. I always thought it was 1.1 to 1.2 so I'll take your number there.

MR. MORRIS: Okay. And that's the number that's in the joint pre-trial order, Your Honor.

A. Okay.

Q. You've never been required to pay that back to anybody, correct?

A. I mean it's undetermined, so I don't know.

Q. I'm asking you as of today --

A. Today, no.
Q. -- in the 18 years or 17 years since you got the money, you could have done whatever you wanted with it, fair?
A. No.
Q. Okay. You understand that your reserve claim is the last undisputed claim in the Highland bankruptcy case, correct?
A. That's what I've been told.
MR. YORK: Undisputed?
MR. MORRIS: Disputed, thank you.
MR. YORK: I'll take that right now.
THE WITNESS: Maybe I answered too soon.
MR. MORRIS: I'll give you a quarter.
Q. You --
A. I know where it's been. I don't want that quarter.
Q. You can't -- you can't identify any other disputed claim, correct?
A. I'm sorry, anything other than that 2000 --
Q. Other than your claim, you're not aware of any other disputed claim?
A. Oh, yeah, not that I'm aware of. But I wouldn't be in a position to know.
Q. Okay. Do you have any knowledge or any view as to whether or not there would be any consequences to Highland if it did not begin the dissolution process by August 11, 2026?

A. Yeah. They just need to amend.

Q. Did you hear Mr. Seery testify that there could be tax consequences by failing to begin the dissolution process because it's a trust and not a corporate entity?

A. I don't think he has expertise to say that and he's made up things to me before. So I don't put a whole lot of faith in what he says.

Q. Okay. But you also don't have any knowledge or ability to tell the judge that Mr. Seery is wrong; is that fair?

A. He's just pulling things out of the air, you know. So I couldn't tell the judge that either, or I would be pulling it out of the air.

Q. Okay. I'll let the judge assess Mr. Seery's credibility.

Let's fast forward to 2019. That's the year that Highland filed for bankruptcy, correct?

A. Yeah. Yes, it is.

Q. And you filed a number of proofs of claim that were later consolidated into Claim 205, right?

A. You're talking about 2020 now, not 2019?

Q. Whenever it was. I'm not putting a time --

A. Oh, okay. I thought you were asking 2019. That was done in 2020.

Q. Okay.

A. I'm thinking October of 2020.
Q. It was consolidated?
A. I think so.
Q. Okay. And ultimately you reached an agreement with Highland to resolve all of your claims except for what we're referring to as the reserve claim, correct?
A. I wouldn't say all my claims. I think I reached an agreement to release Highland from all my claims. I had other claims. I've got claims against others, as we well know.
Q. Maybe it was my bad question.
You reached an agreement to resolve all of your claims against Highland --
A. Correct.
Q. -- other than the reserve claim, my fault.
A. Maybe I misunderstood.
Q. And Exhibit 5 is the settlement agreement; is that right?
A. I'm sorry, where are you now?
Q. Exhibit 5.
A. Yes.
Q. And that has the books and records provision in paragraph 8, correct?
A. Yes, it does.
Q. And in your deposition you testified that you

didn't recall what the reference to spreadsheet was, correct?

A. That's correct.

Q. And you didn't have an understanding of what the phrase, Highland system meant, correct?

A. No, not really.

Q. Okay. Again, the sentence refers to, "The HERA and ERA books and records (spreadsheet) maintained on Highland's system -- on HCMLP's system", correct?

A. Yes. That's what it says.

Q. And you understood at the time that HCMLP referred to Highland Capital Management LP, correct?

A. Yes.

Q. So you would agree that what Highland was required to do was to deliver the HERA and ERA books of records (spreadsheet) that were in Highland's system; is that fair?

A. Yes. But I believe HCMLP included its affiliates, didn't it?

Q. Highland was required under Section 8 of the settlement agreement to deliver the HERA and ERA books and records (spreadsheet) maintained on Highland's system, correct?

A. That's what that says, yes.

Q. Okay. So if it wasn't on Highland's system, Highland would have no obligation -- even if it was the HERA and ERA books and records, if the HERA and ERA books and

records weren't maintained on Highland's system, Highland wouldn't even have an obligation to provide that; is that fair?

A. That gets into how you define Highland system. You've got to remember there's the secret server at SAS Management that these guys were working off of. I know it's not you and your team, but they had some secret systems that were funneling through Highland.

Q. And did you know that before you signed this agreement?

A. I found out that, I think you brought it out in discovery, or a deposition, I guess. Was it Scott Ellington and Isaac Levington?

Q. I have no idea. I'm just going to move on.

A. Well, I think it happened some time in 2021, so -- and as you recall there was like -- we came up with our settlement agreement the morning you all were going to go confirm a plan. And then it kind of continued thereafter. So I think --

Q. Can -- can --

A. I'm trying to answer your question.

Q. I know. I'm going to try and make this really simple.

A. Yeah.

Q. At some point you learned about what you just

testified to, what did you call it, SAS?

A. Well, you know it too, SASManagement.com. They were operating out of the Cayman Islands with it.

Q. So if you knew that before you signed the agreement, you didn't take the time to, you know, reference that in the agreement, correct?

A. Again, I thought in was incorporated in HCM's system.

Q. But you didn't -- you didn't understand what that term meant, you just told the judge that, didn't you?

A. I'm not following you.

Q. And if --

A. Oh, I'm saying in my mind HCM system includes everything that HCM touches.

Q. Okay. Okay.

A. Yeah.

Q. The sentence that you negotiated that we're focused on here does not say that Highland had to deliver any of its own books and records, correct?

A. That's true.

Q. Okay. And the sentence that you negotiated that we're looking at right now does not say that Highland had to deliver anything in its possession that related to HERA and ERA, correct?

A. I'm not sure that's exactly true because it says

all interest in HERA. So to the extent it was with them, they had to give it to me -- or you.

Q. The sentence that you negotiated does not say that Highland was required to deliver anything in its possession that related to HERA or ERA, correct?

A. The sentence itself doesn't say that, no.

Q. Okay. And the sentence that you negotiated that we're looking at -- withdrawn.

A. I was going to say, please tell me which sentence.

Q. Shortly after the Court approved the settlement agreement you and Highland signed the transfer agreements that we looked at earlier, correct?

A. That is true.

Q. Okay. So you don't -- you don't make any claim that Highland failed to perform any obligation under the settlement agreement except the books and records sentence that we're just focused on right here; is that fair?

A. Well, it gets into all of its interest, all of its stuff, to me is a crude term. When I talk to Seery I said, stuff. So that's what I'm talking about.

Q. Okay. And the stuff that you're talking about is the HERA and ERA books and records (spreadsheet) maintained on Highland's system, correct?

A. It's emails. It's communications. It's case files. And all these things I've talked to Seery about, you

know, So I know you weren't part of that dialogue. But that's what really happened.

Q. Let me try -- let me try and ask this question for simplicity purposes.

Other than that provision of Section 8, you do not contend that Highland failed to perform every obligation it made to you under the settlement agreement; is that fair?

A. That's totally false. You violated the section that said you wouldn't -- that we agreed to stay the tax refund thing and you violated that too.

Q. Okay. Anything else?

A. I mean, that's what comes to mind. I don't know if this is a trick question or something but, you know.

Q. Nope.

A month later after signing the agreement after the Court approved it, a month after the Court approved it Highland delivered a whole bunch of documents concerning HERA and ERA, correct?

A. That is true.

Q. And if we look at Exhibit 2, that exhibit describes at least broadly some of the documents that were provided, correct?

A. Yes.

Q. Okay. And so you would agree that on May 5th, 2022 Highland delivered a link to certain HERA and ERA books and

records and they -- and sent two additional emails with zip files that contain additional tax related documents and other business records, correct?

A. Listen, none of that's said here, but I do remember that that happened. It was a very collaborative process so, yes, I remember those things even though this email doesn't say it specifically. I'm not disputing that.

Q. Okay. I mean I think it does, but that's fine. I appreciate that.

A. You said tax and I don't see anything about tax in there.

Q. So if you look at the -- the page ending on 01, the second sentence says, I will send you two further emails with zip files that contain additional tax related documents and other business records.

A. My apologies. I didn't see that.

Q. That's okay.

A. I read the first one.

Q. That's okay. But you were aware of this at the time, right?

A. Look, I was aware that we were trying to get this information. I had a very positive relationship with Mr. Seery at the time. So this is not inconsistent with how we were operating with each other.

Q. And were you aware at the time that -- Mr. Uebler

was your lawyer at the time, correct?

A. Yeah, he was.

Q. And were you aware at the time that Mr. Uebler was told that Highland believed that the production completed its obligations under paragraph 8?

A. Say that last part.

Q. Were you aware at the time that Highland told Mr. Uebler that with the production of these materials, subject to a final review, Highland believed that it had satisfied all of its obligations under Section 8?

A. I'm sorry, but you just made a really good point. This is between Tom and you.

Q. Correct.

A. And I wasn't always privy to those email communications. I had my own dialogue going with Mr. Seery, which was very collaborative, very -- he was doing all the right things, I was trying to do all the right things. So we were not taking the position that that was whatever you said, last and final, or complete, any of that. Because there were certain things that I knew existed that I knew Seery may not know about. And I'd say, what about this? What about that? And so he would go and look and then we would get more.

Q. Okay. There's no question that Mr. Uebler was authorized to act on your behalf with respect to the delivery of documents pursuant to the settlement agreement, correct?

A. Well, that's not fair. I mean, he was certainly authorized to communicate with you because it would be inappropriate for you to communicate with me. But I went principal to principal. And so he didn't make any final determinations with you.

Q. And he didn't send you a copy of this email?

A. I don't know because my dialogue was with Jim Seery. And I didn't focus on what you guys were haggling about.

Q. Okay. Over the summer and into the fall did you have further communications with Mr. Seery about more information that you wanted?

A. Many times.

Q. And did Mr. Seery respond to your request for additional information?

A. He was pretty good about it.

Q. And is that reflected in Exhibit 3?

A. I don't know about that.

Q. Take a look.

A. Yeah. Okay.

Q. And pursuant to this letter, Highland produced more information to you; is that correct?

A. That is true.

Q. Were you -- did you receive this email? It was obviously sent to you, right?

A. Yeah. This is obviously what I was talking about, Seery and I talking to each other. So I focused much more on this than what you guys were doing.

Q. Okay. And Mr. Seery said a couple of times in this email, we're done with HERA and ERA, right?

A. Not quite, because we were also have phone dialogue. And I'd say, I mean, there's a recording of it. He's mad about it, but we go into great detail of what I'm missing and what I need. I can't remember exactly when that was, but it was like -- I just can't remember exactly when it was.

Q. Mr. Daugherty, Mr. Seery told you in writing with copies to other people that upon the transmission of the information described above, Highland will have satisfied its obligations under the settlement and our involvement in HERA and ERA, your entities, will be complete. He told you that at that time, correct?

A. All right. Let me just look at it and make sure it says what you're saying it says.

Q. I'm referring to the last --

A. Last paragraph?

Q. -- substantive paragraph, yes.

A. That last paragraph seems right. I mean, he said that. But I pointed out that there was more and he realized I was right.

Q. You didn't respond with an email taking issue with anything that he said in this email, correct?

A. Well, we talked on the phone most of the time. I didn't -- I didn't feel the need to make formalized emails.

Q. Even though he's making formalized emails to you?

A. You know, again, it was a cordial relationship. And I had a lot of respect for him, frankly, and the job he was doing. And I was appreciative that he was working with me on this.

Q. Okay. If you go to Exhibit 51.

This is -- take your time. I don't mean to rush you.

A. Yeah, give me a second, please.

Q. Take your time.

A. Yes, sir.

Q. This is the follow-up emails to Mr. Seery's October 19th email; is that fair?

A. If we're looking at -- this is from DSI Consulting to Jim Seery.

Q. Well, if you start at the back you'll see Mr. Seery's email. And then --

A. Back of what?

Q. The page --

A. Oh, over here on the right?

Q. Yeah.

A. Okay.

Q. So that's the email we were just looking at. And then there's a series of responses where you chime in and Mr. Seery chimes in, Mr. Romey signs in -- chimes in. And it's all about, you know, making sure you have all of the information and have access to the data, correct?

A. Yeah. It's this dialogue right here.

Q. Okay. And nobody on your behalf reaches out to Highland again until January of 2024 with respect to the issues of HERA and ERA documents; is that fair?

A. I don't think that's true. I think Jim and I had phone calls.

Q. Okay. Can you take a look at Exhibit 53?

A. Yeah.

Q. This is an email from Mr. York to me?

A. Yes.

Q. And do you see in the second paragraph the only discussions between you and Mr. Seery that he refers to were the discussions from the prior summer?

A. I'll just read it.

Okay. Well, that would be 2023, right?

Q. Uh-huh.

A. As I mentioned, I think I talked to him on the phone in 2023.

Q. Okay. There's no correspondence that you're aware of, correct, between October --

A. He says, As Mr. Daugherty and Mr. Seery discussed last summer, that's the Summer of 2023.

Q. So listen, stick with me here.

A. Okay.

Q. In preparation for this trial between October 2022 and January 2024 there's no written communication between or among principals or lawyers concerning any documents, correct?

A. Yeah, I don't know.

Q. Okay. And at no time during that period did Highland give you anything, correct, in terms of documents related to HERA or ERA?

A. I think that's right. Oh, actually, I don't know if I got something in 2023 or not.

Q. Okay. But you don't know?

A. I don't. I don't recall.

Q. All right. Is it fair to say that after October 2022 Highland never produced any more information relating to HERA and ERA?

A. I think that's -- I think that's right.

Q. Okay. And Highland never deviated from its position that it had satisfied its obligations under paragraph 8, correct?

A. That part I don't agree with because I had numerous conversations with Seery up to 2023 when I was telling him,

like I said in a collaborative way, hey, Jim, I know it's not you. I don't trust Thomas Surgent or David Klos because I have reasons not to. I think you should get somebody else, an independent third party because I'm missing this item, this item, that item. I actually went by category. And he always embraced me, you know, with good faith. So it was just not combative.

Q. Okay. You started a lawsuit at that time; is that right?

A. When you say I, what are you talking about?

Q. HERA was the plaintiff.

A. HERA started a lawsuit in 2024.

Q. And you authorized that lawsuit, correct?

A. I did, as the chief asset recovery officer.

Q. Okay. This is the important part here. You authorized that lawsuit believing that Highland hadn't satisfied its obligations under Section 8, correct?

A. That's true.

Q. Okay.

A. By that time you all ghosted me. You ghosted me in like January 2024. I'm like, wow, okay.

Q. Okay. And -- and instead of starting the lawsuit you could have attempted to enforce rights under Section 8 of the agreement in order to get the documents that you believed you were entitled to; is that correct?

A. Listen, I didn't want trouble with Highland. I tried -- I told you, I've got a lot of respect for you. I mean, you do some things that I don't like, but you're a very good attorney. And I didn't want to deal with this. I didn't want to spend all of this money. I was -- I'm insolvent. You know, I don't have the money to do this. So I didn't want to go and have a battle that -- I had to pick my battles at that time.

Q. So I appreciate everything you just said. And I'm grateful that we've always had a professional interaction. But I just have to ask you the question, you made the decision based on your circumstances not to seek the documents from Highland before you authorized HERA to commence that lawsuit in early 2024; is that fair?

A. That's fair, yeah.

Q. Great. And Mr. Bobo is another lawyer who represents HERA; is that correct?

A. Yeah. Bobo had just come on the scene I think in December '23, maybe January 2024.

Q. And do you recall --

A. The HERA scene, the HERA scene. He doesn't work for me.

Q. And do you recall -- but you retained him on behalf of HERA; is that fair?

A. I mean, I'm the human that signed the documents,

yeah.

Q. Yeah. And do you recall that Mr. Bobo threatened to sue Highland in order to get more HERA and ERA documents?

A. No, I didn't. Didn't really focus on it.

Q. Let's go to Exhibit 54.

A. Okay.

Q. Oh, no, I apologize. I think it's Exhibit 4.

A. 4.

Q. What back at the beginning.

And if you'll look --

A. Okay, I see it.

Q. Okay. And do you see Mr. Bobo's email to me starting at the bottom of the second page?

A. I do. I mean, are you talking about over here?

Q. Yeah.

A. Yes, okay.

Q. And at the very last line of it, very last sentence says, "This language is neither ambiguous or confusing" in reference to that sentence in paragraph 8. And he goes on to say --

A. Wait, wait, wait. Where? Give me a line number so I can get there.

Q. Sure. So it's Exhibit 4.

A. I got that.

Q. It's Mr. Bobo's email that begins on the bottom of

the second page.

A. Yep.

Q. And do you see that he purports to quote from paragraph 8 of the settlement agreement?

A. This is a long email.

Q. I'm just focused on the one sentence at the bottom.

A. Bottom of what?

Q. The second page.

A. HERA has absolute right, this?

Okay. Thanks. Yep, I see it.

Q. Okay. So Mr. Bobo purports to quote from paragraph 8 and then says, "This language is neither ambiguous nor confusing and includes all books and records that Highland has related to HERA without caveats or exclusions." That's what you're looking for, right, books and records that Highland has --

A. Me being Pat Daugherty, or do you mean HERA?

Q. Yeah. Well that's what your lawyer was asking for at the time. You would agree with that, right?

A. I didn't read this email. But I'm reading it now. This language is neither ambiguous and confusing includes all books and records that Highland has related to HERA. That's what it says.

Q. Okay. And he concludes his letter -- his email, if you look at the end on page 4 by telling me, Rest assured,

your continued refusal to comply with the settlement agreement will result in our seeking enforcement of same with the Bankruptcy Court.

Did you know that he threatened to sue Highland if we didn't comply with his demands?

A. Again, I tend to go principal to principal. I don't get involved in lawyers manning up on one another. So I didn't -- I didn't read this. I didn't focus on it. I didn't think about it.

Q. Okay. Do you see my response to Mr. Bobo beginning on the first page?

A. Typical you. Two guys going at it, yeah.

Q. And I told him, bring it on.

A. Yes, you did.

Q. I did. I told him to bring it on, didn't I?

A. You did. You guys do that.

Q. And he didn't do that, though, he didn't bring it on, right?

A. No, he didn't.

Q. Right. I mean, I specifically said, well, it would be an unfortunate turn if your client's honestly believe otherwise, meaning that we haven't fulfilled our obligations, a judicial order bringing finality to these matters would ironically be helpful. That's what I told your lawyer at the time, right?

A. I mean, like I said, I wasn't involved in you guy's dialogue. But it says what it says.

Q. Okay. And then after you -- after you authorized HERA to file a lawsuit there's a motion to dismiss. Do I have that right?

A. Are you talking about in the HERA action?

Q. Yes, sir.

A. Yeah, it's been out for 17 months now.

Q. Yeah. And you were aware that the motion to dismiss was filed, correct?

A. Yes.

Q. And at no time did HERA ever make a motion in the district court for leave to serve discovery on Highland, correct?

A. We thought that was inappropriate and antagonistic to the Court to ask for discovery when he hadn't even ruled on the dismissal. So there's a reason for that.

Q. So again -- but that's your reason, that's a decision that you made. It's an option that was available that you chose not to pursue, correct?

A. To make -- to seek discovery on you guys? If we make it to dismissal, of course that's going to happen.

Q. Listen carefully to my question.

A. Okay.

Q. In early 2024 after you filed --

A. It did not happen in 2024. It hasn't happened yet.
Q. Hasn't happened yet. You made the decision that you didn't want to ask the Court for leave to serve discovery, correct?
A. I don't want to get into attorney/client privilege, but we didn't do anything.
MR. YORK: I'm going to tell you not to.
THE WITNESS: Okay. Sorry.
Q. I'm not asking for attorney/client. As a matter of fact, you made --
A. I can tell you we didn't do it.
Q. You didn't do it?
A. Yeah.
Q. Okay.
THE COURT: Real quick just so the Court's clear I want to ask this question right now. Is this the January 2024 lawsuit that was filed?
MR. MORRIS: Yes.
THE COURT: Okay.
THE WITNESS: I think it's February 2024.
MR. YORK: I think it was February.
THE COURT: Okay. But we're talking about the early 2024 lawsuit?
THE WITNESS: This is it, yes.
Q. Now you have -- you have a counterclaim for

specific performance, correct?

A. Yes.

Q. And you're pretty explicit about your motives for that counterclaim, correct?

A. I don't know what you mean by that. But, yes, I have that counterclaim.

Q. Just a couple of more questions.

If you can go to Exhibit 1.

A. Okay.

I'm there.

Q. Okay. So you've got the first cause of action is for breach of contract for failure to provide all the books and records --

A. What page are you on, please?

Q. Apologies. 10.

A. Okay.

Q. Okay. And in paragraph 14 you say, Daugherty bargained for and obtained Highland's interest in HERA as well as Highland's books and records related to HERA. Have I read that first sentence of paragraph 14 correct?

A. You're on 11 then, okay.

Q. Yeah.

A. Yes.

Q. Okay. So that's the claimed breach, the claimed breach is that --

A. I would say that I'm looking at --
Q. Let me just finish the question.
A. Oh, yeah.
Q. The claimed breach is that Highland has not provided what you describe as the bargained for consideration of Highland's books and records related to HERA, correct?
A. As I said, I want to go back to that sentence because it's wonky. It says, Daugherty bargained for and obtained Highland' interest in HERA as well as Highland's books and records related to HERA. I think the -- I think it probably could have been worded better. But what we're saying, you've got our stuff and we want it. We don't want Highland's stuff, if that's what you're suggesting. We want HERA's stuff.
Q. Okay. I'm not suggesting anything. I'm just reading your --
A. Listen, I just read it and you're trying to have me validate it and I'm like, what are we trying to do there, you know?
Q. Okay. And on the next page you've got your cause of action for specific performance, right?
A. Okay.
Q. And in paragraph 22 you said, If the Court does not order Highland to comply with the terms of the settlement agreement and turn over the relevant books and records,

Daugherty will be irreparably harmed. Have I read that correctly?

A. Yeah. I think that's a better sentence to describe it.

Q. And the reason that you would be irreparably harmed is because HERA will be unable to adequately pursue its litigation against Dondero, Okada, and Ellington, correct?

A. That's a concern, yes.

Q. Okay. And what this really amounts to is an insurance policy for you so that if you lose the HERA lawsuit, are you going to come back and sue us because we didn't give books and records?

A. No. Just give us the stuff and we can get out of here.

Q. I just want the judge to understand what the motivation for this claim and this cause of action is.

A. It's simple. Give us the stuff. You were so cooperative and then you stopped.

Q. Is that really what you wanted, all you wanted was the stuff?

A. Yes.

Q. Do you know that we offered to give you the stuff immediately after you filed the counterclaim?

A. Okay.

MR. YORK: Your Honor --

A. This guy.

THE COURT: Go ahead and object.

MR. YORK: -- I'm going to object. Seriously, we're going to get into some sort of like 408 type discussions.

MR. MORRIS: Your Honor, 408 is not nearly as broad as people think. You're not allowed to use settlement materials for the purpose of establishing liability. I'm not doing that. What I'm doing here is establishing motive. The fact of the matter is, Your Honor, we in writing offered to do email searches. We offered to use up to four custodians. We gave them date ranges. We gave -- and I think it's important for the Court to understand that what's going on here is that this is an attempt to manufacture a contingent claim in the event that he loses the HERA litigation. I'm going to grab that too, Your Honor, 408.

Prohibited uses. Evidence of the following is not admissible to prove or disprove the validity or amount of a disputed claim or to impeach a prior contradiction. The furnishing of an offer. That's the thing. I'm not using the fact that we made an offer to prove or disprove the validity or amount of a disputed claim. If Your Honor finds that paragraph 8 says that Highland has to turn over its own books and records, or that Highland has to turn over books and records related to or concerning, I lose. It doesn't matter.

I'm not here trying to prove that. I'm trying to prove that Mr. Daugherty has no interest in getting books and records because he would have worked with us.

MR. YORK: I tell you what, I -- you know what, I'll let you ask the question if you tell him what the specific terms are and he can answer as to why those were insufficient.

MR. MORRIS: Sure.

THE COURT: All right. So the objection is withdrawn?

MR. YORK: Sure. Objection's withdrawn.

MR. MORRIS: May I approach, Your Honor?

THE COURT: You may.

Q. Mr. Daugherty, are you aware that I sent the email to Bo and to Drew on the last -- the next to the last page on November 17th?

A. I'm aware that you had communications with them. This is the first time I'm looking at this.

Q. So you haven't seen this email either?

A. No. My lawyers typically summarize things to me and then I tell them.

Q. And did they tell you that we offered to do email searches using up to four custodians for a specified date range and to produce all hits without regard to attorney/client privilege?

A. Okay. So I did get the first part of that. You were going to limit it to four custodians. And I'm like, no, these guys are notorious for hiding behind other custodians, et cetera, et cetera using other email sites. I'm like, we're not going to limit it that way. I'm not going to agree to it. So if you want to open it up to anybody that touched this stuff and give us back our stuff, then we have something to talk about. If you want to limit it to four people, that's not right because we -- Highland Capital is an institution of fraud and lying which you guys -- you know. And by the way, it's not that I think that Seery is trying to hide this stuff. But I know Thomas Surgent was.

Q. Do you know Thomas Surgent hasn't worked at Highland for a long time?

A. Yeah. Well, I mean, he left like, what, February 2025?

Q. He certainly wasn't there in November 2025, correct?

A. No. He -- you put him in charge of the search up to that point. And I told Seery, don't do it. That guy's a criminal.

Q. Sir -- sir --

MR. MORRIS: I move to strike. Your Honor, I move to strike. That's just reprehensible to attack people who aren't even here without basis.

THE COURT: I'm going to overrule the motion to strike. He's testified. I'll deal with credibility and relevance and all of that.

MR. MORRIS: Okay.

Q. The only response your lawyer made was that you rejected the proposal, right?

A. That's right.

Q. You didn't -- you didn't make a counter-proposal, you didn't take the opportunity to see how much information you could get so you could assess what the boundaries were, correct?

A. I had a dialogue with Seery when I did all that kind of stuff for a couple of years. And then you all went cold on me. And so, yeah, this is what the relationship turned into. No relationship, lawyers talking to each other.

Q. Okay.

MR. MORRIS: I have nothing further, Your Honor.

May I approach the witness just to put an exhibit sticker on this?

THE COURT: Okay. Did you want to move for this to be admitted into evidence?

MR. MORRIS: Oh, yes, I do. I thought the objection was withdrawn, but I'll --

MR. YORK: Well, the objection to the question

was withdrawn. I'm not going to object to the exhibit.

THE COURT: Okay. So I have -- so Exhibit 67, Highland's Exhibit 67 will be admitted.

MR. YORK: By the way, Your Honor, as a matter of housekeeping, Exhibit 99 that I moved to enter earlier, I have -- I realized after I was done, it actually was Daugherty Exhibit 41 which has been admitted. I apologize.

THE COURT: That's okay.

DIRECT EXAMINATION

BY MR. YORK:

Q. All right. Mr. Daugherty, I'm going to try to make this brief because there are a lot of things that I was going to ask you about that Mr. Morris covered with you.

A. That's fine.

Q. Let's do this first.

MR. YORK: Laura, would you please pur up Daugherty Exhibit 57?

A. Is that in here, or is that a separate?

Q. Do you have Daugherty Exhibit 57 --

A. Oh, thanks for putting that up.

Q. -- in front of you, Pat?

A. Yeah, I do.

Q. Do you recognize this document?

MR. YORK: Zoom out a little bit, please. It's a little to --

A. I've got it in a hard copy.

Yeah, I recognize it.

Q. Can you tell us what it is?

A. Yeah. So when I took over control through my entities, I don't actually own it personally, which we can talk about that, but other entities that I'm invested in own HERA. When HERA got its -- when I had those units transferred over to me, first thing I did was have our counsel reach out to all of the law firms who had done legal work for HERA since -- actually, since the beginning, 2009. And that would have been Abrams & Bayliss. That would have been Andrews Kurth. That would have been DLA Piper. And then individual lawyers, if you want me to go through them I can. There's others. Those are the primary ones and then we went to Highland.

Q. All right.

A. So I'll make it quick. We went out and we said, hey, you know, give us your case files. Give us your invoices. And give us everything you had to do with HERA. This -- all those other law firms basically told us to pound sand, except for Abrams & Bayliss, the Delaware counsel. And they gave us a treasure trove of exhibits, including this email right here.

Q. And just to be clear, so this was something that was given to Mr. Uebler?

A. Yes.
Q. Okay. And the email here that you're referring to was sent by Mr. Surgent in 2013, correct?
A. This is correct.
Q. And it's related to HERA and has a whole bunch of HERA documents that are attached to it, right?
A. Correct.
Q. Something that you -- did you get this from Highland separately under your settlement agreement?
A. No.
MR. YORK: Okay. Let me go then to Daugherty Exhibit 95, please, Laura.
Q. And, Mr. Daugherty, do you -- look at the screen, Mr. Daugherty. Do you recognize this document?
A. Yes.
Q. And is this another document that you received from Abrams & Bayliss in response to your request?
A. Yes. Steven Howell is a lawyer at Abrams & Bayliss.
Q. That related to HERA, correct?
A. Correct.
Q. And that included emails that were at least at the top, an email from Steven Hoff at Abrams & Bayliss to Tdemaris@HCMLP.com. and also to Mr. Surgent and also to Kevin Abrams, correct?

A. Correct.
Q. Was this email string and the attachments something that you received from Highland as part of the settlement?
A. No.
MR. YORK: Go to Daugherty 96, please, Laura. Zoom in at the top, please.
Q. Do you recognize this document?
A. Yes.
Q. What is it?
A. This is an email from Isaac Levington who was in-house counsel at Highland and he also represented himself in the Delaware case as counsel to HERA who sends an email to Kevin Abrams. I'm not going to go through the list. You can see them all there. But Scott Ellington, the general counsel at Highland who also represented himself as counsel to HERA in Delaware, Mark Katz, who also represented himself as counsel for HERA in Delaware, and Michael Hurst who also represented himself. And then to Eric Gerard, who at the time of this email was at Highland representing HERA as it related to December 2013, the escrow.
Q. And the escrow that was purportedly set up to satisfy any judgment that you obtained in the Texas State Court action against Highland and HERA back in 2014, correct? Is that when it went to trial?
A. He represented to the jury that this escrow was in

place to pay me any claim I would get against HERA.

Q. What happened to that escrow account?

A. The day my judgment was mandated, Ellington, Katz, Levington orchestrated a series of transactions to strip the escrow of all its assets and leave it with zero.

Q. Now, as part of that state court action, Highland had claims back against you, didn't they?

A. They did.

Q. And as part of that a jury awarded Highland, I believe it was approximately $2.8 million in attorney's fees against you; is that right?

A. Plus interest.

Q. Not on attorney's fees?

A. No, that's right. The interest was 3.12 or something.

Q. Okay. And when that mandate occurred in addition to stripping the escrow out, did Highland take any other steps to try to enforce the judgment against you?

A. Yes.

Q. How so?

A. They put a lien against my house. They sent a constable --

Q. Let me -- I'll do it this way.

A. I don't want to do it.

Q. Did they file a writ of execution against you?

A. I'm not going to lose. They forwarded a writ of garnishment. They filed turnover and they sent the constable over to my house.

Q. And the writ of garnishment --

A. In front of my wife and kids.

Q. And the writ of garnishment was filed with respect to your interest in HERA, correct?

A. Yeah.

Q. And was there an affidavit that was filed by Scott Ellington the general counsel of Highland that was attached to that writ of garnishment application?

A. He said he was in charge of litigation with me. I'm paraphrasing. And that I didn't have the means to satisfy the judgment so that that garnishment order needed to be executed.

Q. Specifically didn't his affidavit say that he was unaware of any other assets that you had other than the HERA -- your HERA interests?

A. He was trying to seize what he thought was mine, (indecipherable few words), which were my wife's and Trustway.

Q. Okay. Was -- did you get any of these emails relating to the escrow agreement from Highland as part of your settlement?

A. I'm sorry, I'm a little shaken up. Give me that

one more time.

Q. Did you receive any of these emails from Highland as a result of the settlement?

A. No.

Q. Okay. And by the way, what did you end up having to use the tax refund money that you received from the 2008 tax return for?

A. I was on fumes and I used what was left of that and I had to borrow.

Q. Did you use it to pay the judgment to Highland?

A. Yeah.

Q. Did you have to use it to fund your -- to pay your attorneys to represent you in the litigation Highland brought against you?

A. Yeah.

MR. YORK: Okay. Show Exhibit 98, please, Laura.

Q. Do you know what -- do you recognize this document, Mr. Daugherty?

MR. YORK: If you can zoom in, please.

A. That print is too small. I can't read it.

Q. Is this another email relating to the Abrams & Bayliss escrow?

A. Yeah. This is Scott Ellington.

Q. And is this the email that reflects that it was

transferred out of HERA?

A. Yeah.

Q. This was an email that you didn't receive as part of -- from Highland as part of the settlement in this -- of your claims in the bankruptcy; is that right?

A. No.

Q. Okay. Did you -- Mr. Klos you heard testify earlier about admitting that you did not get all of the invoices from all of the law firms that had been representing HERA in the past. Do you agree with him on that?

A. That I didn't get them all?

Q. Yes.

A. Yes, I agree with that.

Q. And do you know specifically are there ones in particular that you're interested in seeing that you don't have?

A. Yes.

Q. Why?

A. They're from Gruber Hurst and they involve communications with Thomas Surgent. And there's some missing from Andrews Kurth with Mark Katz. And also this Gerard guy and Scott Ellington.

MR. YORK: Okay. You can take this down, Laura.

Q. Mr. Daugherty, briefly let's go to your

compensation and benefits statement.

MR. YORK: Which is, I'm sorry, Laura, Daugherty 14. Thanks.

Q. Okay. Mr. Daugherty, you've seen this document before?

A. Sorry, I got it. I don't got it.

Yeah, I see it.

Q. Did you have any discussions with anyone at Highland at the time that this compensation and benefits statement was issued to you?

A. Up to and at this time. But primarily most of the conversations were prior to this. This was the result.

Q. Who did you have those conversations with?

A. Jim Dondero.

Q. Was the idea of paying you a bonus through an IRS tax refund your idea?

A. No.

Q. Whose idea was it, to your knowledge?

A. It was a scheme Dondero cooked up with the tax people at Highland.

Q. Would you have rather Highland paid you a cash bonus for 2008?

A. Yes.

Q. Was that something that Highland was unable to do?

A. Yeah. They were -- this was the first time Highland

almost filed for bankruptcy. It was during a great financial crisis. Lehman had failed and that triggered -- Dondero had sold a bunch of credit protection on Lehman swap, credit swaps the week before Lehman failed which blew Highland up. And the banks declared an event of default. And they came in. They wanted FTI Financial Advisor to review the books. They saw that Dondero and Okada were taking out money when the company was insolvent. So they file us in an involuntary 7. They asked me to come in and negotiate with the creditors because we didn't get into what my role was at Highland, but I was head of distress and head of restructuring. So call us knuckle draggers, but I knew all the knuckle draggers at the banks because we'd been on the same side and now they were against us. And they were like, Pat, we need you to step in.

So I started negotiating with them. And they were furious, initially with me and all of the other team leaders. And I'm like, we didn't get anything. But any way they said, you're going to agree immediately to no further cash payments, other than for base salary. And they -- they required a 20 percent reduction in force head count.

Q. Mr. Daugherty, when you received this compensation and benefits statement, did you discuss with Mr. Dondero at all what would happen if there was an audit of the Highland's partnership return for 2008?

A. On multiple occasions.

Q. What did he tell you?
A. He said --
Q. Strike that.
A. I was going to say --
Q. Okay. Let me back up.
All right. When you spoke to Mr. Dondero did you express concerns about the possibility that there would be an audit?
A. Yes, all of us did. And the tax people even informed us, you know, in a conference room. And they had a presentation about it.
Q. Did you express to Mr. Dondero that you didn't want to be on the hook at the end of the day for any adjustment as a result of that audit?
A. I told him it was a hair-brain scheme and I was very concerned about blow back for the IRS, which was definitely going to get, in my opinion, their attention.
Q. Okay. And did Mr. Dondero say to you at the time, we'll take care of any delta between what we're giving you and what the IRS ultimately decides?
A. Yeah. He said, I'll take care of you. I'll make it up to you. Not just me, but others.
Q. There's been a mention about the separation and release agreement form that was attached to your employment agreement. I want to go to Daugherty Exhibit 42, because

it's a better version.

A. This big one, or this one you just handed me?

Q. 42. Are you there? Let me know when you're there.

A. I'm not.

I guess I should just look at the screen. Yes, I see this email.

Q. It's an email from Mr. Collins to you on October 17th of 2011, correct?

A. Yes.

Q. And he attaches three documents -- he indicates he's attaching three documents to that, his email; a Highland separation agreement, a Cornerstone separation agreement, and a CR Verde (phonetic) consent. Do you see that?

A. I do.

Q. I will represent to you, Mr. Daugherty, that Exhibits 43, 44, and 45 are the attachments of those three draft agreements, okay?

A. Got it.

MR. YORK: Laura, if you would, would you please go for a moment to Daugherty Exhibit 46?

Q. So, Mr. Daugherty, at the bottom of this page of Exhibit 46 we get back to the email we just looked at in 42. And then you respond a few days later in the morning. 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? Do you see that?

A. Yes.

Q. Mr. Collins responds to you later that day, Pat, yes, this is an all or nothing deal. We need all three documents signed. Do you see that?

A. Yes.

Q. Okay. Setting aside the differences between the form of the separation and release agreement that was on your employment agreement and what they sent you, did you have concerns about the other two agreements that they wanted you to sign?

A. Yes.

Q. And specifically which agreement or agreements?

A. The Cornerstone separation agreement and the CR Verde consent, action by consent.

Q. Because?

A. The Cornerstone separation agreement was one of -- I was a chairman of the board. It was one of the companies in my private equity portfolio. And the gates had gone up on the funds that -- I don't know if you know what that means, but it's in the talk right now with private debt funds, or whatever. But you put up the gates, you can't get your fees and you're limited as a manager on what you could do. And they were using Cornerstone to pay me $600,000 to sign the separation agreements with Highland, which I thought was

illegal and against the Investment Advisor Act of 1940.

Q. And so even if you had -- were willing to sign the separation and release agreement that they had sent you, which was different that the form that they had sent you, you still couldn't do that because of what your concerns with the Cornerstone and the CR Verde documents?

A. Yeah. We didn't talk about CR Verde, but that was making me release all of my interests that were validly awarded to me there. So, no, I wasn't going to sign all three. It was a Catch 22.

MR. YORK: Your Honor, I pass the witness.

MR. MORRIS: I just have like two or three questions, I hope.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. MORRIS:

Q. Mr. Daugherty, I'm sorry that you went through what you went through many years ago. You filed claims against Highland relating to those issues, correct?

A. Yes.

Q. And those claims were settled, correct?

A. Again, only against Highland. I'm still pursuing against others.

Q. Correct. How much have you received from the Highland estate on account of the allowed claims that you

have today?

A. Net of having to pay back debt or just what I got?

Q. What you received from the Highland estate.

A. Oh, 12 -- the settlement agreement, 12.75 million.

Q. Okay. So today you've received over 12.75 million and the only things left is this income tax reserve claim, right?

A. Oh, I don't have any of the 12.75 million.

Q. I didn't ask you that. The only -- the only thing --

A. What do you mean the only thing left?

Q. The only claim that you have left --

A. Oh, I have left against Highland, well, books and records --

Q. Right.

A. -- and the interest thing.

Q. Okay. Can you go to the compensation statement, whether it's Highland Exhibit 32 --

A. Do you want to give me a number?

Q. -- or I think it might be your Exhibit 14.

MR. YORK: Daugherty 14, yeah.

Q. Either Daugherty 14 or Highland --

A. Yeah, I got it.

Q. Okay. This is the compensation statement that you're suing on, right?

A. Yeah. This is the tax refund issue bonus, yeah.
Q. And you don't disagree with what I said to the Court earlier this morning that the entirety of the agreement is reflected in those three sentences under 2008 tax refund, right?
A. I do not agree with that. You're just taking the words, but there were oral agreements and discussions that went along with it to get there.
Q. Okay. Are those cited in your proof of claim?
A. I don't know what you're talking about.
Q. You filed a proof of claim in this case, didn't you?
A. I don't know how -- I mean, there's conversations I had with Dondero that awarded me this.
Q. Okay. This document doesn't say anything about an audit, correct?
A. It implies it.
Q. Sir, this document doesn't refer to any audit, correct?
A. It implies it. But it doesn't say it in actual words. But it implies -- if actual refund deviates materially from estimate. The only way that can happen is from an audit.
Q. It doesn't say anything about a guarantee, does it?
A. What do you mean guarantee?

Q. This doesn't guarantee anything for you, does it?
A. Everything in here was guaranteed on the compensation as long as I was employed that day.
Q. As long -- and you're not employed today, correct?
A. I was employed the day that it was given to me. That's when it became guaranteed.
Q. Okay.
A. I'm not employed there today.
Q. And we know that bonuses were typically given in three installments, correct?
A. Three, sometimes four.
Q. And you understood that if you were employed at the time that you got that award and you quit between, let's say hypothetically payment number two and payment number three, you'd forfeit your right to payment number three, correct?
A. That is true. In fact, when I left that was the case.
Q. Okay. So what's happened here is that you got the tax refund back in 2008 or 2009 and what you're looking to do is get a payment in the future when you're no longer employed, correct?
A. Incorrect. I got this the day I was there and it was subject to being trued up based on what's -- as we all, I think can acknowledge, a 17 year odyssey that won't end.
Q. There's a place for your signature at the bottom of

this document. Do you see that?

A. I do.

Q. You didn't sign it, did you?

A. I did sign it.

Q. Have you produced that in discovery? Have you seen it anywhere?

A. Highland had that document.

Q. Okay.

MR. MORRIS: No further questions, Your Honor.

THE COURT: Hold on one second, Mr. Daugherty. I don't know if I have any questions.

I do want to just make sure I'm understanding. And I don't think that it -- it sounds like maybe it was related to your other proofs of claim or your other grounds for your claims against the bankruptcy estate. But you're not asserting that any of these -- any of the parties that are still with Highland, any of the officers, were the ones that were directing the actions taking to collect judgments. That was all pre-bankruptcy?

THE WITNESS: If I understand you correctly, I have -- yeah, it was all pre-bankruptcy.

THE COURT: Okay.

THE WITNESS: David Klos is the only one who's a legacy issue. And I had to release him, you know, pursuant to my settlement with Seery for everything up to the time of

that settlement agreement. So if that's what you're asking, am I trying to make claims against any of these people for the past? No.

THE COURT: Okay. Thank you.

And so the issue on the documents is some invoices related to attorneys that were paid by Highland related to HERA and ERA transactions; is that correct?

THE WITNESS: Not exactly. This is the bait and switch. If you could indulge me for a minute.

What Highland did is they took all the money out of HERA and then they allocated, as Klos did truthfully say, 93 percent of their legal costs back to HERA. And through accounting (inaudible word), they're like, oh, HERA, you don't have any money. Highland will lend you the money to pay our legal fees. But since you don't have any money at the end of each year we'll write off the note so that Highland can expense it in their K-1s.

THE COURT: Okay.

THE WITNESS: And Klos was the architect for that.

THE COURT: Okay.

THE WITNESS: So HERA was paying it, even though it was Highland. But Highland gave HERA the money to pay for it and then forgave the loan against HERA each -- well, they didn't forgive the loan, wrote it off and kept the

loan out there so that when Mr. Seery transferred the units over to me in March, there was a $14 million debt owed back to Highland. And I'm like -- we had a long dialogue on this. I'm like, Jim, this is fraud.

THE COURT: The lawsuit that was -- thank you. The lawsuit that was started in February of 2024, that's HERA's efforts to recover for these, I'm just going to say bad acts that are being asserted by the former Highland employees or directors, officers, partners.

THE WITNESS: Yeah. There's a spirit of negotiation with Mr. Seery. He's like, you can have all the former guys, Dondero, Ellington, I'm sure you're going to hear those names in these other matters. He goes, but you're going to release everybody in my core unit. And I didn't want to release Thomas Surgent. And we went back and forth and back and forth and he goes, you're releasing Thomas Surgent. And I'm like, I hate doing this, but, okay. So Seery's core group of, I want to say 13 people on that list, I released all of them. And then I got HERA in order to go after Hunter Mountain Trust, Dondero, law firms, Hunton Williams. It's 21 defendants. And I say, I. HERA is going after them for stripping of its assets.

THE COURT: Okay. This wasn't asked of you, but what is your position as to what your percentage ownership of Highland is or was at the time of the 2008 tax

return?

THE WITNESS: Yeah. In all fairness, it's been an item of debate because we had a profit's interest in the form of an LTIP, long-term incentive plan, that converted out of the partnership interest. And so there are really only two real partners at Highland, it was Dondero and Okada. They got all the money, all the distributions. And we got phantom income. You know, we got our percentage allocated to us, but they never gave us distributions. So then they would true us up for the tax, you know, we'd get like a tax true up each year. And I think that's what they're talking about. He had a tax account. Well, I never got a dime from there and I had a tax account, but it was so small when Highland gave me, as Mr. Seery said, oh, you got $4 million of carry loss forward. I'm like, well, my capital account isn't enough to take advantage of it.

So the way the tax rules work, you only get to take the losses up to the amount of your capital base. And anything else you have to wait until future years, if you make money. And if you quit, you lose it forever. So I never got what's been presented as me getting. And that' why this is so complicated. Because how much do you really own? How much are you really getting? And then what is your capital base in that account, because that limits what the IRS can give you, even if they're on your side.

THE COURT: Okay. But you don't dispute that when you filed your 2008 tax return, your K-1 provided a specific percentage of ownership?

THE WITNESS: I mean, I had no say in it. The K-1 comes from the issuing company, Highland Capital. I had no say in it.

THE COURT: Okay. I think that's all the questions that I have. Any party is welcome to ask any follow-up questions.

MR. YORK: I don't have any follow up.

MR. MORRIS: I've got -- I've got two quick ones.

FURTHER REDIRECT EXAMINATION

BY MR. MORRIS:

Q. I understand that Highland sent you the K-1 --

A. Yeah.

Q. -- with your percentage interest in Highland, correct?

A. Whatever they allocated to it.

Q. And you accepted that document. You sent it to the IRS. And you received a refund based on that document, right?

A. I wouldn't say accepted it. You make it like I had a choice. When an issuing company gives you your K-1, the IRS is getting notified of that so you have to file it in

your tax statements. It's not a matter of you agreeing with it. They're doing it in dual purposes. They're giving it to the IRS for the whole entity. And then each individual has to basically recognize their pro rata share. You don't get to debate it. You don't get to say, it's not mine.

Q. Did you ever tell anybody that you thought it was wrong?

A. I thought it was all BS, yes.

Q. Okay. But --

A. Dondero --

Q. -- that BS you took, you sent to the IRS, and you received a refund, correct?

A. And I got that provision in my compensation letter so that if it ever got called BS by the IRS, I would be made whole.

Q. And you said that you didn't have sufficient capital in your account; is that right?

A. Not to use all of it.

Q. Can you go to Exhibit 10, please?

A. Yep. Claimant trust agreement?

Q. Yeah. This is the -- the last amendment.

THE COURT: Which Exhibit 10?

MR. MORRIS: Highland Exhibit 10.

Q. Do you remember Mr. Seery pointed out the $4 million?

A. I heard it.
Q. Yeah.
A. It's accurate, I guess, from your end but not accurate from the Receiver's end. But go ahead and tell me where you want to go.
Q. Exhibit 10, Highland Exhibit 10.
A. I think it might be over here. Highland exhibits over here?
Q. Uh-huh.
A. This?
Q. Yes.
MR. MORRIS: This will be the last question, Your Honor.
A. Yes.
Q. Okay. If you go to page 3.
A. Yes.
Q. As of this -- according to this page, as of April 15, 2007 the book capital account for you was over $9 million; is that right?
A. For what year?
Q. As of April 15, 2007.
A. I don't know.
MR. MORRIS: Okay. No further questions, Your Honor.
THE WITNESS: Okay.

THE COURT: Anything further?
MR. YORK: Nothing further.
THE COURT: Thank you, Mr. Daugherty.
THE WITNESS: Thank you.
THE COURT: Any other witnesses?
MR. MORRIS: No, Highland rests.
THE COURT: Okay.
Mr. York?
MR. YORK: Mr. Daugherty rests, Your Honor.
THE COURT: Okay. I'm assuming you all have closings that you'd like?
MR. MORRIS: I can do it in 5 minutes.
MR. YORK: Same.
THE COURT: All right.
MR. MORRIS: I'm anxious to catch my plane.
THE COURT: What I was going to say is, we can end and we can set up a Webex and we could do closings if you wanted to, we could do them virtually. And I could set -- we could --
MR. MORRIS: I so appreciate that, Your Honor. Unless Mr. York insists, I'd like to be done today.
MR. YORK: Whatever is most convenient for the Court. I know the Court probably wants to get back to --
THE COURT: Well, I don't have a flight until 9:55. I don't trust lawyers and their estimates, so I'm

actually very impressed.

So the Court is okay. If you really want to do closings, we can do closings. I mean, let me just double check. Staff, and the building, I don't --

MR. EDMOND: We can always get out.

THE COURT: We can always get out.

MR. YORK: We just can't get back in.

MR. MORRIS: No one tell California, it's in reverse.

So really quickly, Your Honor. I just have like five points to make.

Number one, in no particular order, Exhibit 41, I think they are missing the boat on that. We've heard argument from counsel, we've heard from Mr. Daugherty that they believe that somehow that one sentence in that compensation statement provides some indemnity or guarantee to satisfy, you know, any obligation to the IRS, including interest and penalties. That's what they interpret the compensation statement today -- to mean.

Exhibit 41, I appreciate that Mr. Daugherty didn't accept it. I appreciate there's lots of reasons why he didn't accept it, but they've never directly addressed the issue that I'm asking the Court to focus on and that is, why would you include the very provision in that agreement, if you already thought it was included in the compensation

statement? It doesn't make any sense. And it certainly doesn't say the same thing. That's point one.

Point two. HERA/ERA, the HERA and ERA books and records. In my opening I pointed out to at least five different times where they have completely distorted the plain -- what Mr. Bobo said was plain and unambiguous language. It is the HERA and ERA books and records. It is not Highland's books and records. And I think Mr. Daugherty ultimately agreed with that. It is not books and records concerning HERA and ERA. It's not books and records related to HERA and ERA. It is a very intentionally narrow statement, plain and unambiguous. There's no dispute about that. The HERA and ERA books and records. We have provided them. And I think that's the end of the story.

The claim. I appreciate Mr. Liles-Tims' testimony. But that's not credible. It is not credible to tell the Court that under Section 502 you can't -- you don't have enough information in order to estimate the claim for purposes of distribution. I will argue, yet again, if the Court actually concludes that, the right thing to do is to disallow the claim. The right thing -- the wrong thing to do would be to say that even though there is indisputable evidence of undue delay, that the failure to estimate would cause undue delay in the administration of the Highland case, that we will let this go on indefinitely. I think there's

only two choices for the Court to make today. One is either to disallow it based on Mr. Liles-Tims' testimony that it's just impossible to estimate the claim, or the Court can take Mr. Klos' analysis and make whatever reasonable adjustments the Court thinks is appropriate. It's a completely objective analysis. The only possible exception is that that last line item with respect to, you know, the benefit to Mr. Daugherty from having the asset for 17 years, you know, it's a very modest number to begin with. It's 4 percent is what Mr. Klos used. And it's not even 4 percent. It's probably half of that, because he testified that they capped it at an amount that was equal to the penalties and interest.

If Your Honor thinks it's not worth anything, take it out. But you can surely estimate this claim. The undisputed testimony from Mr. Seery was that both, because there's a contractual obligation, the contractual obligation provides no out for further extensions. I mean, think about it. It would be a plan modification to try to change this again. Everybody would have to get notice. We've already had an objection from Dugaboy. I mean, how much money are we going to spend just litigating the issue. And what if we're wrong? What happens if the motion's denied? It doesn't make any sense. I appreciate that Mr. Daugherty has his own parochial interests. But those interests conflict with the broader estate. And in addition to, you know, the really challenging

problem of trying to get an extension on notice to everybody subject to objections after we had that just in June of last year, you have what Mr. Seery pointed out to, very real potential tax consequences because this is a trust with a finite life. That's what's supposed to happen any way.

We had the cross of, I think it was Mr. Seery, about, you know, testimony that happened at the claims estimation hearing. And, oh, that Judge Jernigan somehow said that the claim couldn't be estimated. The Court wasn't presented with information for that purpose. And she specifically said, it's not like I'm here in a claims estimation hearing, right? This is a very different procedure than that was. This is a procedure under 502. It's a procedure that requires the Court to estimate, if it can. And if it can't, the claim should be disallowed, if it can't for a very particular purpose. And that is because the failure to estimate will result in undue delay in the administration of the estate.

Finally just, again, on the books and records. You heard Mr. Daugherty. I appreciated his candor. He filed his lawsuit believing that he didn't have anything. He made a very conscious decision not to sue to collect the documents. We're here only because Highland had to get this case resolved, this particular claim resolved. So he filed a counterclaim. There's no question that we offered to give him, you know, emails and he refused to take those. And I

think the Court should take him at his word. In paragraph 22 of his specific performance claim that if the Court orders us to produce one single piece of paper, that is going to be his guarantee in a new claim, and a new lawsuit in the event that he loses his suit, which, you know, is very possible.

And I don't -- I don't think -- and, gosh, I feel bad for Mr. Daugherty. I've seen him get emotional before. I really do sympathize with it. I empathize with it. But that's not a reason to ignore the plain and unambiguous terms of the parties' bargained for agreement. It is the HERA and ERA books and records.

And so with that, Your Honor, unless you have any questions, I'm good to go.

THE COURT: So let me make sure I understand your position, because there has been discussion about emails. There was a showing of emails that they had received that existed. Is it -- is it your client's position that because they are coming from Highland email addresses and on Highland servers that that is why they are not HERA and ERA documents?

MR. MORRIS: And they're Highland employees on Highland server, Highland email addresses. If he wanted Highland's books and records, he should have negotiated that. That is not what he negotiated for. He negotiated for the books and records of HERA and ERA. And so those are

Highland's books and records. That has always been our position. Because if you start down the road of, oh, well, you know what, let me interpret that really broadly and let me ignore the fact that it says, the HERA and ERA books and records and interpret it to be anything related to HERA and ERA, anything concerning HERA and ERA, Highland's books and records, there is no end. And that was really Mr. Seery's primary concern. That's why he put limitations on costs and burden and why he told you quite candidly, look, we'll give you the interest. If we have books and records, we'll give them to you. No question that we gave it to them. No question Highland complied with every freaking -- every single obligation that it had. This is just -- this is just like it's time to cut the cord. It's time to -- it's time to estimate his claim. If the Court is going to allow it, estimate it. And it's time to be done with Mr. Daugherty and Highland. That's what we're looking for here.

THE COURT: Okay.

MR. MORRIS: Thank you, Your Honor.

THE COURT: Thank you.

MR. YORK: All right. Thank you, Your Honor. I'm also going to try to be brief. And I'm going to start with the allowance issue.

It is unequivocal that Mr. Daugherty had a separate written agreement in that compensation statement with

Highland. They don't dispute that at all. That allowed -- that entitled Mr. Daugherty to the true up based on however the IRS audit turns out. That has been established both under his Section 4.5 in the language about the bonus that had been paid and also -- that's 3.1 and then 4.5 for any other written agreements between the company and the executive.

I found it ironic that Mr. Morris brought up the transmission of the draft of the larger settlement -- separation and release agreement to Mr. Daugherty. And he raised what I think he thought was a rhetorical question of why would you include about the tax issue in that agreement if you thought it was covered by the compensation statement? Well that's because the draft actually supports Mr. Daugherty's testimony that that's what Highland and Mr. Dondero had promised him. Because -- Laura, if you'd put up PD-42.

Mr. Collins says at the bottom of his email, The documents 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. Highland was sending this to him saying, we know we've agreed to this in the past, so we're putting it in here. That's what they did.

You can take that down, Laura. Thank you.

With respect to estimation. The fact of the matter is

is that nothing has changed in terms of whether you can estimate reasonably Mr. Daugherty's claim relating to the IRS audit from 2020 until now. The IRS audit remains unresolved. And Mr. Morris argued that you couldn't quantify it. And it shouldn't be quantified for purposes -- for voting purposes. The Court agreed with that.

Mr. Liles-Tims has testified as to exactly why there are problems with Highland's own proposed calculations of what it thinks an estimate might be and all of the variables that apply here. And that it's unreasonable under the circumstances to be able to come up with a reasonable estimation of what that claim would be.

If the Court disagrees with Mr. Liles-Tims on that and is going to do some sort of estimation, I think the Court needs to keep in mind the fact that this is still an unresolved issue that Highland has with the IRS. And any estimation that the Court makes needs to be on the most conservative side possible for whatever Mr. Daugherty's potential exposure could be down the road, depending on how long that IRS audit dispute lasts. Because if the Court -- we face a Hobson's Choice here, as a result of Highland bringing this adversary proceeding. Mr. Daugherty could, if the Court were to estimate, end up at the end of the day with less that he receives on that claim than what he ultimately has to pay back to the IRS and what he was entitled to under

the compensation benefit statement.

Finally --

THE COURT: The reverse is true, though, too, correct? I mean, he could receive an amount of money and then ultimately the IRS could say, we accept your settlement offer at 50/50 or whatever and Mr. Daugherty's liability could be less than what the allowed claim is, if I estimate it.

MR. YORK: I acknowledge that, Your Honor. But a balance of the equities here, given that Highland is the one who decided now we've got to bring this when -- by the way, Highland was aware of the claimant trust expiration date at the time that they entered into the settlement agreement with Mr. Daugherty. All of that -- that agreement was already in place. They entered into a settlement agreement in which they had said they were going to stay all of this. And so if you're going to balance the equities here of, you know, a chance that Mr. Daugherty has additional exposure versus a potential windfall, you must err on the side of being the most conservative estimate at the end of the day.

THE COURT: Do you have any cases that stand for that proposition?

MR. YORK: I don't, Your Honor. I haven't been able to come across anything that is in this sort of a

context.

THE COURT: Okay.

MR. YORK: Finally, Your Honor --

THE COURT: One more question.

Mr. Morris argued that if I take what Mr. Liles-Tims says as correct, that you cannot estimate this claim at this time because of all these various out there. But I find that I have to estimate a claim. Do you agree that that means that I should be disallowing the claim?

MR. YORK: No, I do not.

THE COURT: Okay.

MR. YORK: Because Highland is the one that brought the cause of action, so the burden is on Highland.

THE COURT: Okay.

MR. YORK: Switching gears to the books and records provision for a second, Your Honor.

It is clear that Highland did not provide Mr. Daugherty everything that he was entitled to. And I appreciated your question to Mr. Morris about whether Highland is contending that anything that is maintained on Highland's system is Highland's and doesn't belong to HERA.

Let's be clear. Paragraph 8 of the parties' settlement agreement said that Highland would -- the transfer will include the HERA and ERA books and records, "maintained on HCMLP's system," on Highland's system. And that's the only

practical way it could have worked if HERA was simply a vessel and all of the Highland employees who were dealing with issues related to HERA and ERA were doing it on Highland's own servers.

And so what the Court should do, it should order specific performance. Order Highland to produce the communications, the emails, the invoices, everything relating to HERA and ERA that it has, because it no longer has that entity. And they can turn it over to Mr. Daugherty. And then we'll be done with that issue.

THE COURT: I'm going to ask you a question about that.

Who's going to oversee the performance of that? I heard today that a settlement was offered for them to have four custodians go about the process of doing that, which was rejected. So if the Court orders Highland, who has those four people to operate this search for these records and they go about doing it and they come back and they produce 100 documents, or 100 pages of documents, or whatever, how do I know -- how do we -- how do you all get comfortable with that was sufficient if you can't -- if you weren't even comfortable with their offer to do it already? I'm just trying to understand. Because I'm afraid that if I say, I order them to produce emails and they produce 100, or 10,000, or whatever the number is, that somebody doesn't come back

and say, nope, still more emails out there. We know it. How do I do it?

MR. YORK: Sure. So I think what you -- to go to the, one of the points you made about the prior discussions was about the number of custodians. And that's, I think, where a big issue lies. If -- I think the Court can put other parameters in place that don't have restrictions on custodians, but have other parameters in place that allow for searches to be run in a manner in which it would provide adequacy as to whether everything's been produced. It could also be done, theoretically, with the involvement of some, you know, outside forensic inspector -- inspection.

THE COURT: Who's paying for that?

MR. YORK: That would be up to the Court to decide at the end of the day.

THE COURT: Okay.

MR. YORK: Apparently my client says he will pay for it.

THE COURT: Keep going.

MR. YORK: So those are ways in which the concerns that you have can be resolved is having those parameters in place, having that forensic inspection done to ensure that everything has been adequately searched and adequately produced.

THE COURT: Okay.

MR. YORK: And that's all I had, Your Honor.

THE COURT: All right. Thank you.

MR. YORK: Thank you.

THE COURT: Mr. Morris, brief.

MR. MORRIS: Just really briefly.

I think your questions pointed to the problems here. There was never -- there was never an end and it ignores, I think, the plain and unambiguous statement in the agreement. Yes, maintained on Highland's system. That's why I asked the question if there are -- if the HERA and ERA books and records weren't on Highland's -- maintained on Highland's system, Highland wouldn't even have an obligation to produce that, if it wasn't maintained. So we all acknowledge the only place the obligation arises is if the HERA and ERA books and records are maintained. So there's no dispute about that. The only question I think Your Honor has to ask yourself is what is the -- what does the HERA and ERA books and records mean? And you have an enormous description of the information that we've provided. And I don't know what the contours are, what they're looking for. It's a moving target. It always has been a moving target. There's -- I think Your Honor put your finger right on it. How am I ever going to get to the end of this? And how can we assure ourselves that if we produce a piece of paper today and he loses his case tomorrow, that the next day he's not going to

turn around and sue us? Because that's just -- that's not acceptable. They're not -- we have produced the HERA and ERA books and records. It's really that simple.

You know, we made an offer to try to do it to resolve this thing. He wouldn't bite. Wouldn't even counter. And he sat on his hands for years, right, sat on his hands for years.

Thank you, Your Honor.

THE COURT: Thank you.

All right. I appreciate the parties. I appreciate the professionalism that was shown throughout the hearing by both counsel, as well as the witnesses. The Court is going to take this matter under advisement. I will ask -- I don't believe that as part of the pre-trial you all had any provision there regarding proposed findings of fact and conclusions of law. I'm going to ask that each side file proposed findings of fact and conclusions of law. And then I'll take it under advisement and issue a ruling.

MR. MORRIS: Your Honor, can I have an extended period of time to do that? I am going to be up all night again tonight. I've got other commitments that I have to do. I was not planning for this. I've got a two-day mediation in Los Angeles on the 5th and 6th. We've got the big hearing on the 11th. We've got a big hearing next Friday on the motion for protective order. Proposed findings of

fact and conclusions of law are substantial. We'll have to get the transcript. If Your Honor can wait six or eight weeks, I would be delighted to do that.

THE COURT: Okay. Mr. York, let me hear what you have to say to that. I mean, I understand, yes, we're going to be back here. We've got a hearing next Friday. We've got trial in the middle of May. So I understand the issue.

MR. YORK: I agree.

THE COURT: I mean, I can scratch -- I can scrap the proposed findings of fact and conclusions of law. I just often times like the parties to, you know, provide what they believe and we'll work off of that.

MR. YORK: What was Your Honor's intended time frame?

THE COURT: I don't know that I had one in mind. I was going to ask the parties. But I'm happy to give a month. But I'm also happy to give six weeks. You know, this is not going to be any decision I'm going to have out next week. Let me put it that way. So I don't have a problem with six weeks, if the parties are agreeable, or --

MR. MORRIS: Can we confer?

THE COURT: That's fine.

MR. MORRIS: And get back to you early in the week?

But where does six take us?

MR. YORK: End of May.

MR. MORRIS: Yeah, like a June 1st kind of time frame.

MR. YORK: That's fine with me, Your Honor.

THE COURT: Okay. Let me pull up the calendar.

MR. MORRIS: Yeah, June 1st.

THE COURT: How about I give the parties until June 5th, which is that Friday?

MR. MORRIS: Great.

THE COURT: Okay. So if you'll submit findings of fact -- proposed findings of fact and conclusions of law by June 5th.

MR. MORRIS: Perfect.

THE COURT: Okay. All right. Anything further?

MR. MORRIS: No, Your Honor.

MR. YORK: No, Your Honor.

THE COURT: All right. Thank you all.

MR. MORRIS: Thank you so much.

MR. YORK: We really appreciate it.

(End of Proceedings.)

C E R T I F I C A T E

I, CINDY SUMNER, do hereby certify that the foregoing constitutes a full, true, and complete transcription of the proceedings as heretofore set forth in the above-captioned and numbered cause in typewriting before me.

/s/Cindy Sumner

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