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

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

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

THE DUGABOY INVESTMENT TRUST,

Appellant

v.

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

Appellees

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

APPELLANT THE DUGABOY INVESTMENT TRUST'S REPLY BRIEF

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

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

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

Dated: May 15, 2026

Respectfully submitted,

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INTRODUCTION

This Court should disregard Highland's arguments to the contrary and reverse the bankruptcy court's order granting Highland's motion to fix the value of Dugaboy's Class 11 interest (R. 001505, Dkt. 4401). The bankruptcy court committed reversible error across several domains, and Highland's effort to clean up the record and explain what the court "really" meant are highly motivated but ultimately unconvincing efforts.

First, the bankruptcy court erred by adopting Highland's approach of using limited partner capital accounts to value Class 11 equity interests. That method is both flawed by design—in relying on a measure that bears little connection to market value—and unreliable as a matter of law because Highland presented no evidence that any expert had previously proposed it or that any court had adopted it. The Reorganization Plan does not dictate a particular method for valuation, but case law makes clear that the lack of recognition and general acceptance dooms Highland's method. By contrast, the *pro rata* methodology proposed by Dugaboy is both grounded in the facts of this case and widely accepted in the field.

Second, nothing in Dugaboy's proposed approach violates either the Plan or the absolute-priority rule. Dugaboy does not dispute that its Class 11 interest is subordinated to HMIT's Class 10 interest and that it will receive nothing until HMIT's claim is paid in full. But that dodges the real dispute, which concerns what

to do with surplus funds that arrive after HMIT has already been paid in full. Dugaboy's approach answers this question by preserving its entitlement to share in such funds according to its *pro rata* share. Highland's approach does not address it at all.

Third, the bankruptcy court erred in applying the doctrine of res judicata in a way that constrained its discretion to reconsider prior rulings and perpetuated errors that infected the entirety of its ruling.

- The confirmation of the Plan does not create a res judicata foreclosing Dugaboy's arguments on valuation methodology. To the contrary, Dugaboy's proposed method is fully consistent with the Plan, which determines the priority of claims but does not prescribe any method for calculating the value of those claims.

- Just because the bankruptcy court erred in adopting Highland's flawed methodology to fix HMIT's Class 10 interest, res judicata did not bind the court to repeat the same error when it later considered Dugaboy's Class 11 interest.

- Despite Highland's attempt to whitewash it, the record makes clear that the main reason behind the bankruptcy court's invocation of res judicata based on its own prior rulings was impatience and dissatisfaction with what it called the "revolving door" of Dugaboy counsel zealously arguing on behalf of their client on issues that were, in fact, still open to question.

- The required elements of res judicata were not present here, and nor were those of other preclusive doctrines like collateral estoppel or law of the case.

Finally, the question of the prior bankruptcy court judge's denial of Dugaboy's recusal motion is properly before this Court. As explained by Judge Boyle in ruling on a separate appeal from Chief Judge Jernigan's denial of Dugaboy's motion to recuse, the interlocutory recusal-denial order merges into the final and appealable order on the Class 11 issue. *See* R. 000580, *The Dugaboy Investment Trust v. Highland Capital Management L.P.*, No. 3:25-cv-02579-B (N.D. Tex. Dec. 3, 2025), filed as Exhibit A to Dugaboy's opening brief. Dugaboy has properly preserved the recusal issue for purposes of this appeal. Therefore, Dugaboy asks this Court to determine (1) under the standard of 28 U.S.C. § 455(a) that Chief Judge Jernigan should have recused herself prior to issuing the orders Dugaboy is challenging in this and other appellate proceedings; and (2) that Chief Judge Jernigan's order on the Class 11 motion should be reversed for that among many other reasons.

ARGUMENT

A. The Bankruptcy Court Failed to Explain Why Highland's Novel Methodology Was Reliable or Appropriate

Reversal and remand are required here because the bankruptcy court erred in failing to make findings supporting its conclusion that Highland's fixed-amount approach was a recognized or reliable method for valuing Dugaboy's Class 11 residual equity interest. A bankruptcy court's choice of valuation methodology is reviewed *de novo*. *See In re Stembridge*, 394 F.3d 383, 385 (5th Cir. 2004); *Matter*

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

1. Highland's Contention That Dugaboy "Offered No Evidence" on Valuation is Wrong on the Facts and Misstates Dugaboy's Burden

Highland asserts that Dugaboy "declined to put on any evidence" to support a different valuation methodology, and that once Highland made a prima facie case, the burden shifted to Dugaboy. *See* Highland Brief [Dkt. 27], at 19–20. But that argument misstates the standard. Dugaboy could—and did—refute Highland's "prima facie case" by merely using argument and cross-examination to expose the fatal flaws in Highland's proposed methodology. (Of course, Dugaboy went well beyond that when it proposed its own well-accepted and reliable method based on *pro rata* equity ownership interests.) Nothing more was required of Dugaboy because the bankruptcy court had an independent obligation to make its own determination and explanation of its reasoning for adopting Highland's valuation method. In *Matter of Community Home Financial Services Corporation* ("*Community Home*"), the Fifth Circuit required bankruptcy courts to "elaborate on the reasoning behind [their] valuation method[s]." 32 F.4th 472, 482–83 (5th Cir.

2022). When a bankruptcy court fails to do so, remand is the proper remedy—***even*** where (unlike here) the appellant "did not provide an alternative valuation." *Id.*

Community Home is directly on point. There, the bankruptcy court had "simply adopted valuations" proposed by one party's expert without "elaborat[ing] on the reasoning behind its valuation method." *Id.* at 482. The Fifth Circuit explained that "because the bankruptcy court had not given specific reasons for its choice of valuation method," the "proposed valuation was unreviewable." *Id.* at 483. Critically, the Fifth Circuit ordered a remand even though that appellant "did not provide an alternative valuation," but "did point out a problem underlying the bankruptcy court's valuation": that the court had applied assumptions inconsistent with its own findings. *Id.* The court explained that this "uncertainty is sufficient to merit further consideration by the bankruptcy court, in order for the court to determine how much money [the creditor] is owed . . . and to explain why the court's valuation . . . is correct." *Id.* at 483.

Here, the bankruptcy court's sole justification for adopting Highland's fixed-dollar methodology was that it constituted the "only evidence of what is reasonable, Dugaboy having chosen not to put on evidence." R. 001582, Hrg. Tr. 74:16–17. But *Community Home* required the bankruptcy court to ***independently*** assess whether the methodology employed is legally sound. 32 F.4th at 482–83. Neither the June 30, 2025 order nor the September 22, 2025 order contains any explanation of why

limited partner capital account balances—maintained for tax purposes far removed from marketplace valuation—are an appropriate proxy for equity value. R. 001303, Dkt. 4297; R. 001505, Dkt. 4401.

Moreover, the nature of the burden that shifts to an objector is to substantiate the grounds for objection through argument and cross-examination—not necessarily to present affirmative expert testimony. *See, e.g.*, *MM Steel, L.P. v. JSW Steel (USA) Inc.*, 806 F.3d 835, 852 (5th Cir. 2015) ("Vigorous cross-examination [and] presentation of contrary evidence . . . are the traditional and appropriate means of attacking shaky but admissible evidence." (citing *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 596 (1993)). Dugaboy did exactly that: it objected, argued in support of its *pro rata* methodology, and cross-examined Highland's CEO James Seery who had proposed the fixed-amount approach. And on cross-examination, Seery conceded that the capital accounts on which he based the valuation are "a tax number bearing no relation to actual value" (R. 001528, 9/18 Hrg. Tr. 21:4–18), and that Dugaboy's proposed *pro rata* method is "standard." R. 001169, 6/25 Hrg. Tr. 132:20–133:8. The bankruptcy court's statement that Dugaboy "chose not to put on evidence" does not mean Dugaboy failed to make legal arguments, challenge Highland's methodology through cross-examination, or create a record demonstrating the unreliability of Highland's approach—all of which it did. The record is replete with such evidence from Highland's own witness.

2. Highland Has Identified No Authority Supporting the Reliability or General Acceptance of Using Capital Accounts to Establish Value

Highland asserts that it "solicited extensive testimony from Seery explaining the . . . method he used to calculate HMIT's Class 10 interest and Dugaboy's Class 11 interest . . . using [James] Dondero's own figures from filed tax returns." *See* Highland Brief [Dkt. 27], at 15. That is irrelevant.

That Dondero signed tax returns does not validate the methodology used. Tax returns serve a specific IRS compliance purpose; they were never designed or intended to function as equity valuation tools. The question is not whether the numbers derive from authentic documents, but whether such numbers are appropriate at all for determining the value of equity interests. They are not, because capital accounts are calculated primarily for tax purposes and their book values have little or nothing to do with the actual market value of an equity interest. R. 001336; R. 001529, 9/18 Hrg. Tr. 21:4–18.

Additionally, a methodology does not become reliable merely because it draws on internal records and the underlying math adds up. Reliability requires that a method be tested, proven, and recognized within the relevant field. *See In re H&M Oil & Gas, LLC*, 511 B.R. 408, 413 (Bankr. N.D. Tex. 2014) (declining to allow trustee to offer testimony because he failed to offer proof that "the methodology that he relied on in coming to his opinion [was] reliable and credible").

Here, Seery conceded under oath that he was "not valuing anything" and did not know what the interests' "actual value might be." R. 001582, 9/18 Hrg. Tr. 36:22–37:18. Seery acknowledged that the use of equity ownership percentages to value interests is a familiar and conventional method, calling it a "standard" approach, while identifying no authority or recognized practice supporting Highland's capital-account methodology. R. 001169, 6/25 Hrg. Tr. 132:20–133:8. When pressed, Seery conceded he could not name a single case, treatise, or practitioner who had ever used capital accounts to value equity interests. R. 001169, 6/25 Hrg. Tr. 133:4–8. These concessions demonstrate that the bankruptcy court erred in adopting Seery's untested and unprecedented methodology over Dugaboy's widely recognized and reliable alternative.

B. The Plan Establishes Priority But Does Not Dictate Highland's Valuation Methodology

1. The Plan Only Subordinates Dugaboy's Class 11 Interest and Does Not Extinguish It

Highland misunderstands both the operative Plan and its effect on Dugaboy's Class 11 interest. Highland conflates one true statement (that the Plan subordinates Class 11 to Class 10) with a separate unsupported assumption (that Class 10 will never be paid in full) to arrive at the factually unsupported and legally irrelevant conclusion that Dugaboy's argument should not even be heard because its interest is

purportedly "out of the money" and will never recover anything.[1] *See* Highland Brief [Dkt. 27], at 25–26. But this argument conflates subordination—which governs the *sequence* of payment to the equity interest holders—with a complete extinction of their subordinated interests which is nowhere contemplated in the Plan. Subordination means that Class 11 receives nothing until Class 10 is paid in full. But if and when that happens, Class 11 will get its turn. Subordination does not allow HMIT to shove aside the other equity holders and capture the full amount of any surplus beyond its allowed claim amount.

The bankruptcy court fixed HMIT's Class 10 interest at $336,940,230.58 based on capital account balances rather than using a *pro rata* methodology. R. 001303, Dkt. 4297. Under Dugaboy's *pro rata* approach, HMIT receives 99.5% and Dugaboy receives 0.5% of each surplus dollar, fully respecting the priority structure while preserving Class 11's equity rights.

Furthermore, both the Plan and Claimant Trust Agreement provide that upon wind-down, "any remaining Claimant Trust Assets that exceed the amounts required to be paid under the Plan" will be transferred to the Holders of Contingent Claimant

[1] This argument appears to be a thinly disguised attack on Dugaboy's standing, asserting that because Dugaboy is certain to receive no money at all beyond the fixed amount of its allowed claim, it has no economic interest giving it standing to challenge Highland's method of valuing its claim. *See* Highland Brief [Dkt. 27], at 19, 25–26. But the bankruptcy court has already rejected that argument by determining that Dugaboy has a sufficient economic stake to allow it to object to the June 2025 settlement (R. at 001074; June 25, 2025 Hrg. Tr. 38:19-22)—and the same conclusion applies equally to Highland's motion to fix Dugaboy's allowed interest. In any event, Highland has not raised standing as an issue in this appeal and therefore waives it.

Trust Interests—both Class 10 and Class 11. R. 000710–000711; R. 000703–000704 (Plan IV(A)); R. 000778 (CTA ¶ 9.2). This provision tracks 11 U.S.C. § 726(a)(6), which provides that any residual estate property is to be distributed to the debtor (here, the Equity Holders). Highland identifies no Plan or CTA provision overriding this default rule in favor of HMIT capturing 100% of any surplus.

If the Plan truly intended Class 11 to receive nothing under any circumstances, then there would have been no need to create Class 11 at all. The Plan's creation of separate classes with vesting provisions necessarily contemplates a scenario where Class 11 participates.

Highland's reliance on Seery's testimony that *pro rata* distribution would be "anathema to . . . the structure of the plan" (R. 001540–41) does not advance its position. Seery is not the arbiter of Plan construction; the Plan and CTA documents themselves are. And Seery elsewhere conceded that the Plan "***doesn't tell you how to do the amount***" of any claim—an admission that the methodology question is not dictated by the Plan and was open for the bankruptcy court to decide on the merits. R. 001166, 6/25 Hrg. Tr. 130:14–19. In sum, the Plan does not dictate valuation methodology, and Dugaboy's *pro rata* approach is fully consistent with the Plan.

2. *Pro Rata* Allocation Does Not Violate The Absolute-Priority Rule

The absolute-priority rule operates as a ceiling as well as a floor: senior classes cannot receive more than 100% of their claims. *See In re Idearc, Inc.*, 423 B.R. 138,

170 (Bankr. N.D. Tex. 2009) ("The corollary of the absolute priority rule is that senior classes cannot receive more than one hundred (100%) recovery for their claims.").

Highland fails to address this corollary at all. By fixing HMIT's recovery at $337 million and capping Class 11 at $740,081.61 while assigning HMIT 100% of any further surplus, the bankruptcy court's ruling violates the very corollary Highland invokes—and does so on the basis of an unrecognized and unreliable methodology. Such a mistake constitutes reversible error. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 453–54 (1968) (reversing plan confirmation where the court below relied on an incorrect valuation methodology).

C. The Bankruptcy Court Erred In Its *Res Judicata* Analysis

As already explained in Dugaboy's opening brief [Dkt. 23], the bankruptcy court erred in mistakenly concluding that it was required to apply the same methodology to valuing Dugaboy's Class 11 interest as it had previously done with HMIT's Class 10 interest. That error—which this Court will review with no deference—fatally undermines the bankruptcy court's ruling.

"The res judicata effect of a prior judgment is a question of law that th[e] court reviews *de novo*." *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 571 (5th

Cir. 2005) (citing *Procter & Gamble Co. v. Amway Corp.*, 242 F.3d 539, 546 (5th Cir. 2001)).

Attempting to clean up the bankruptcy court's error and salvage its flawed ruling, Highland wrongly contends that the court's invocation of res judicata was directed only at the *confirmed Plan itself*—not at the bankruptcy court's own prior Class 10 ruling—and that a confirmed plan has preclusive effect. *See* Highland Brief [Dkt. 27], at 26–27. This is wrong for multiple reasons.

First, even if the bankruptcy court's invocation of res judicata were directed entirely at the confirmed Plan itself, it is irrelevant because Dugaboy's proposed valuation method is fully consistent with the Plan. Furthermore, res judicata does not support Highland's proposed method because neither the bankruptcy court in this case nor any other court has previously considered or adopted the capital-account method used by Seery. Finally, the record makes clear that the primary basis for the bankruptcy court's ruling was the purported res judicata effect of its own prior rulings, even if it also mentioned the Plan in passing. *See, e.g.*, R. 001521, 9/18 Hrg. Tr. 13:15–19 ([DUGABOY COUNSEL]: "So which part are you saying, Your Honor. Are you saying you believe it's res judicata because of the plan or are you saying you think it's res judicata because of the 9019 ruling a few weeks ago? THE COURT: Well, both.").

1. Dugaboy Is Not Challenging The Plan Classification, Just Highland's Unsupported Methodology

As a threshold matter, Dugaboy does not challenge the Plan's classification of Class 10 and Class 11 or the subordination of Class 11 to Class 10. Dugaboy challenged neither at confirmation, and does not do so now. What Dugaboy challenges is the post-confirmation methodology used to fix the allowed dollar amounts of those interests— a question the Plan does not address and that was never decided at confirmation. The Plan "***doesn't tell you how to do the amount***" of setting any claim, as Seery himself admitted. R. 001166, 6/25 Hrg. Tr. 130:14–19. This implementation question is not barred by res judicata.

For that reason, the preclusive effects of the confirmed plans recognized in *Travelers*, *Stoll*, and *Espinosa* do not apply here. *See Travelers Indemnity Co. v. Bailey*, 557 U.S. 137 (2009); *Stoll v. Gottlieb*, 305 U.S. 165 (1938); *United Student Aid Funds v. Espinosa*, 559 U.S. 260 (2010). *Travelers*, *Stoll*, and *Espinosa* address the preclusive effect of confirmed plans on attempts to challenge plan *provisions*. Dugaboy is not challenging any provision of the Plan; it is challenging a post-confirmation *implementation* ruling that applies a particular methodology nowhere mandated by the Plan. *See In re Vitro Asset Corp.*, 539 B.R. 108, 114 (N.D. Tex. 2015) (finding that while the authority was barred from arguing the plan provision violated the Bankruptcy Code (a challenge to the plan itself), it could still dispute whether that provision applied to its specific claim (a challenge to implementation)); *In re Trans World Airlines, Inc.*, 261 B.R. 103, 119 (Bankr. D. Del. 2001) ("The res

judicata effect of a confirmation order, however, does not bar claims based on post-confirmation acts.").

2. The Record is Clear That the Bankruptcy Court's Main Concern Was The "Revolving Door" of Dugaboy's Lawyers Re-Arguing Issues It Deemed Already Decided

The bankruptcy court's own words show it was primarily referring to the *methodology* previously applied to Class 10, not the Plan itself. The court expressed frustration regarding Dugaboy counsel's repeated assertion of certain issues, including valuation: "How many times is it appropriate for this Court to consider the same issue? Isn't that exactly what I'm doing?" R. 001523-24, 9/18 Hrg. Tr. 15:15–17. She even hinted at the possibility of sanctions: "I think a lot of us who have been involved with this case for a very long time, we're just very weary of the *déjà vu* all over again. And we're almost too weary to move for sanctions, entertain sanctions." R. 001584, 9/18 Hrg. Tr. 76:13–16. The record plainly demonstrates that the bankruptcy court was principally concerned about its own rulings being questioned.

3. The Elements of *Res Judicata* or Any Other Potential Preclusion Doctrine Are Not Satisfied Here

Even if res judicata could bar re-argument of a methodological dispute within the same case—which it cannot—its required elements are not met here. Res judicata applies only where (i) the parties are identical or in privity, (ii) the prior judgment was rendered by a court of competent jurisdiction, (iii) the prior judgment was a final judgment on the merits, and (iv) both actions involve the same claim or cause of

action. *See Petro-Hunt, LLC v. United States*, 365 F.3d 385, 395 (5th Cir. 2004). At minimum, the identity-of-parties element fails: the Class 10 proceeding adjudicated HMIT's interest, while the Class 11 proceeding adjudicated Dugaboy's. Nor does any other preclusion doctrine apply—neither collateral estoppel nor law-of-the-case binds a court to its own prior interlocutory rulings within the same proceeding. *See Zarnow v. City of Wichita Falls, Tex.*, 614 F.3d 161, 171 (5th Cir. 2010). The bankruptcy court's mistaken belief that it was bound by its own prior decision is itself reversible error. *See Matter of Mendoza*, 111 F.3d 1264, 1266, 1270 (5th Cir. 1997) (court's failure to understand the full bounds of its discretion is itself an abuse of discretion warranting remand).

D. The Recusal Issue Is Properly Before This Court

Highland incorrectly argues that Dugaboy's recusal argument fails because (i) Dugaboy never moved for recusal in connection with the Class 11 proceedings below, and (ii) that Dugaboy misrepresents the Fifth Circuit Judicial Council's action because Chief Judge Jernigan voluntarily recused herself. Both are wrong.

1. Chief Judge Jernigan's Previous Order Denying Recusal "Merged" Into The Final Class 11 Order And Is Properly Part Of This Appeal

Dugaboy moved to recuse Chief Judge Jernigan on August 15, 2025,[2] after the Fifth Circuit issued an opinion denying mandamus relief but acknowledging that "a strong argument could be made that [Chief Judge Jernigan] had a duty to recuse." *Dondero v. Jernigan*, No. 24-10287, 2025 WL 1122466, at *7 (5th Cir. Apr. 16, 2025). Chief Judge Jernigan denied Dugaboy's recusal request on September 2, 2025,[3] but Dugaboy was unable to appeal this standalone order denying its recusal motion, as Judge Boyle dismissed Dugaboy's appeal from that order after finding the recusal ruling non-final and non-appealable. *See* R. 000580, *The Dugaboy Investment Trust v. Highland Capital Management L.P.*, No. 3:25-cv-02579-B (N.D. Tex. Dec. 3, 2025) (Exhibit A to Dugaboy's opening brief). But in her ruling dismissing Dugaboy's appeal, Judge Boyle noted that the Dugaboy *could* appeal the order denying recusal once the bankruptcy court entered a subsequent final and appealable decision, as prior nonfinal orders (such as the order denying recusal) will "merge" into the final order and become reviewable on appeal from the final order.

[2] *See* R. 000567, *James Dondero, Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., The Dugaboy Investment Trust, The Get Good Trust, and NexPoint Real Estate Partners, LLC, f/k/a HCRE Partners, LLC, A Delaware Limited Liability Company's Motion to Recuse Pursuant to 28 U.S.C. § 455*, Dkt. 4372 (attached as Reply Exhibit 1).

[3] *See* R. 000289, *Order Denying Motion to Recuse, Pursuant to 28 U.S.C. § 455*, Dkt. 4379 (attached as Reply Exhibit 2).

See id. at 5 ("Once the bankruptcy court renders a final decision, prior nonfinal orders 'merge' into the final order and may be reviewed on appeal from the final order." (citing Fed. R. Bankr. P. 8003(a)(4)). So Dugaboy is properly including its appeal of the earlier recusal denial as part of its appeal from the Class 11 order, which is indisputably final and appealable. Highland does not even acknowledge or present an argument on the merger issue, and its waiver argument rests entirely on the false premise that appeals from final bankruptcy orders can never address the prior nonfinal orders issued by the bankruptcy court.

Under Federal Rule of Bankruptcy Procedure 8003(a)(4), the recusal denial "merges" into the final Class 11 Order and is reviewable on appeal from that order. Judge Boyle, who heard Dugaboy's Motion for Leave to Appeal from the bankruptcy court's September 2025 denial of recusal, expressly acknowledged that "the Recusal Denial could theoretically have merged into the Class 11 Order, which was entered later." *See* R. 000580, *The Dugaboy Investment Trust v. Highland Capital Management L.P.*, No. 3:25-cv-02579-B (N.D. Tex. Dec. 3, 2025) (Exhibit A to Dugaboy's opening brief). Dugaboy is not required to file a new recusal motion as part of every contested hearing to preserve the recusal issue when it appeals from a final decision that emerges from that hearing. And doing so would only exasperate the bankruptcy court and give Highland more ammunition to smear Dugaboy as a "vexatious litigant." *See* Highland Brief [Dkt. 27], at 32. The order denying recusal

therefore merged into the indisputably final and appealable order on the Class 11 issue, and it is properly before this Court.

2. 28 U.S.C. § 455(a) Required Chief Judge Jernigan To Recuse

Highland contends Chief Judge Jernigan was under no statutory obligation to recuse because it insists that Chief Judge Jernigan recused herself "voluntarily" rather than in response to the Fifth Circuit's "corrective action." The premise of Highland's argument is false, and even if it were true the conclusion does not follow. Highland fixates on whether the Fifth Circuit Judicial Council's resolutions of the judicial complaints filed against Chief Judge Jernigan should be characterized as "corrective action" that prompted Chief Judge Jernigan to recuse—or whether this Court should believe that Chief Judge Jernigan, after denying no fewer than five separate motions to recuse in the bankruptcy court,[4] abruptly changed her mind and "voluntarily" recused herself on December 18, 2025, for reasons having nothing to do with the Fifth Circuit Judicial Council's investigation and resolution of the numerous judicial-misconduct complaints that had been filed against her. *See Highland's Objection to Dugaboy's Motion for Relief from Order and Motion to*

[4] *See* R. 000285, Dkt. 2060 (first Motion to Recuse); R. 000460, Dkt. 3406 (second Motion to Recuse); R. 000480, Dkt. 3570 (third Motion to Recuse); Motion to Recuse Pursuant to 18 U.S.C. §§ 144 and 455, *Kirschner v. Dondero et al.*, Case No. 21-03076-sgj, Dkt. 309 (N.D. Tex. Feb. 27, 2023) (fourth Motion to Recuse, filed in the *Kirschner* adversary litigation); R. 000567, Dkt. 4372 (fifth Motion to Recuse).

Vacate, Bankr. Dkt. 4535, at 40–44. But Chief Judge Elrod's orders make clear that Chief Judge Jernigan's recusal was part and parcel of the "corrective action" needed to secure dismissal of the judicial misconduct complaints. The order dismissing Complaint No. 05-26-90042 states:

> While the judge remains steadfast that she has no bias or animus against any party in any matter pending before her, she has also recused herself from all matters related to the company's bankruptcy case that are currently pending before her. I find, without regard to the veracity of the allegations in the complaint, that these actions constitute appropriate corrective action that acknowledges and remedies the problems raised by the complaint. This aspect of the complaint is therefore subject to conclusion under 28 U.S.C. § 352(b)(2).

In re Complaint of Judicial Misconduct Under the Judicial Improvements Act of 2002, Case No. 05-26-90042 at 7 (Dec. 29, 2025), *available at* https://tinyurl.com/yynh3u67 (emphasis added); *see also In re Complaint of Judicial Misconduct Under the Judicial Improvements Act of 2002*, Case No. 05-26-90045 at 3 (Dec. 29, 2025), available at https://tinyurl.com/2vka5dn6. Chief Judge Elrod specifically found that Chief Judge Jernigan's recusal constitutes "appropriate corrective action" and that her recusal "acknowledges and remedies the problems raised by the complaint." So it is entirely truthful for Dugaboy to describe the recusal decision as "corrective action" necessary for Chief Judge Elrod to dismiss the judicial-misconduct complaints. And this resolution of the judicial-misconduct complaints against Chief Judge Jernigan was unusually serious. Apart from these complaints against Chief Judge Jernigan, only three of the more than 400 Fifth

Circuit judicial-misconduct complaints resolved since December 2019 have been resolved by the Chief Judge through corrective action, rather than a finding of insubstantiality. And the Fifth Circuit's Chief Judge has not referred a complaint to a special committee for imposition of sanctions since 2015.

It also does not matter whether Chief Judge Jernigan's recusal was "voluntary" or taken in response to the Fifth Circuit Judicial Council's investigation and resolution of the judicial misconduct complaints. The issue for this Court to resolve is whether Chief Judge Jernigan's recusal was required by 28 U.S.C. § 455(a). The answer to that question does not depend on whether or to what extent the Fifth Circuit Judicial Council nudged Chief Judge Jernigan into finally recusing herself after years of refusing to do so. Dugaboy readily acknowledges that neither Chief Judge Elrod nor the Fifth Circuit Judicial Council ruled on whether Chief Judge Jernigan was statutorily compelled to recuse herself, even as they described her recusal as "appropriate corrective action that acknowledges and remedies the problems raised by the complaint." *In re Complaint of Judicial Misconduct Under the Judicial Improvements Act of 2002,* Case No. 05-26-90042 at 7 (Dec. 29, 2025) . It is the responsibility of *this* Court to determine whether 28 U.S.C. § 455(a) required Chief Judge Jernigan to recuse—as she finally did in December of 2025 after years of steadfast refusals. It is not bound to rule one way or the other on that question by anything the Fifth Circuit Judicial Council did.

CONCLUSION

For the reasons discussed above and in Dugaboy's opening brief, the bankruptcy court's Order fixing the allowed amount of the Class 11 interests should be reversed and remanded for reconsideration by the new presiding judge under the correct legal standards.

Dated: May 15, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 15, 2026, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

/s/ Geoffrey S. Harper
Geoffrey S. Harper

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limitations of Federal Rule of Bankruptcy Procedure 8015(h) as it contains 4,950 words, excluding the portions of the document exempted by 8015(g).

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

/s/ Geoffrey S. Harper
Geoffrey S. Harper

Reply Exhibit 1

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

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

MOTION FOR RECUSAL

Movants James Dondero, NexPoint Asset Management, L.P. (f/k/a Highland Capital Management Fund Advisors, L.P.), NexPoint Advisors, L.P., The Dugaboy Investment Trust, Nexpoint Real Estate Partners, LLC, and the Get Good Trust respectfully request that this Court recuse itself from these proceedings and that another judge of the United States Bankruptcy Court for the Northern District of Texas be assigned to preside over this bankruptcy. In addition, Movants respectfully request that the Court vacate all orders and other judicial decisions rendered by the Court in this bankruptcy from the date the Court began writing its novels "parodying" Movants to the present day.

This Court has been writing novels with characters difficult to distinguish from the participants in this case and with plots tracking these bankruptcy proceedings. The United States Court of Appeals for the Fifth Circuit observed that: "Due to the similarities between the characters in Chief Judge Jernigan's novel and the litigants currently before her in court, a strong argument could be made that she had a duty to recuse." *Dondero v. Jernigan*, No. 24-10287, 2025 WL 1122466, at *7 (5th Cir. Apr. 16, 2025). And although the Court of Appeals declined to force recusal in response to an interlocutory petition for mandamus, it did not vindicate or in any way defend this Court's actions or its refusal to recuse in response to the novels. *Id.*

The Court of Appeals denied mandamus solely on account of the exceedingly deferential standard of review employed by a district court in reviewing a mandamus petition, as well as the additional deference owed by a court of appeals when reviewing a district court's refusal to issue mandamus. The Court of Appeals explained that even a strong showing that the bankruptcy court erred by declining to recuse is insufficient to warrant mandamus relief ordering recusal. Instead, a petitioner must show that the lower court "*clearly and indisputably* erred" before mandamus can issue. *Id.* at *7 (emphasis in original) (internal citation omitted); *see also id.* (holding that reviewing courts will not intervene on mandamus "to correct a duty that is to any degree debatable."). On top of that, the Court of Appeals was reviewing the district court's order declining to issue mandamus requiring this Court to recuse, which added an additional layer of deference as district-court orders of this sort are reviewed only for "abuse of discretion." *See id.* at *3.

This Court should take heed of the Court of Appeals' suggestion and step away from this case. *See id.* at *7. The recusal issue will be raised again on direct appeal, where the parties will not need to show only "clear and indisputable error." Rulings infected by this "strong argument" for recusal will not serve judicial economy, as they will add to what will need to be redone if the Court of Appeals finds the failure to recuse reversible error on direct appeal.

BACKGROUND

On April 5, 2023, Movants petitioned for mandamus in the District Court, seeking immediate review of this Court's latest decision declining to recuse itself from this case. *Dondero v. Jernigan*, No. 3:23-cv-00726-S (N.D. Tex.), Dkt. 1. The District Court denied mandamus, and the Movants appealed to the Court of Appeals. *Id.*, Dkts. 25, 26.

On November 5, 2024, a panel of the Court of Appeals issued a decision affirming the District Court. With respect to this Court's novels, the Court of Appeals noted some dissimilarities

between the hedge fund and CEO depicted in the books and Highland Capital and James Dondero. It concluded "that a reasonable reader or observer of these proceedings would not necessarily question Chief Judge Jernigan's impartiality in this case." But it did not analyze the deferential standard of review on mandamus that was particular to its analysis of the novels.

The Movants petitioned for rehearing *en banc* and focused on the extraordinary circumstances of the novels. *Dondero v. Jernigan*, No. 24-10287 (5th Cir.), Dkt. 96. The Court of Appeals called for a response and kept the *en banc* petition under advisement for nearly five months. *See id.*, Dkt. 112. On April 16, 2025, the original panel (as authorized by Fifth Circuit rules) took control of the petition for rehearing *en banc*, granted panel rehearing, and replaced its opinion. *Id.*, Dkts. 141, 142. The panel thoroughly reworked its analysis of the novels and how they affect the duty to recuse. And the amended opinion observes that: "Due to the similarities between the characters in Chief Judge Jernigan's novel and the litigants current before her court, a strong argument could be made that she had a duty to recuse." *Dondero v. Jernigan*, 2025 WL 1122466, at *7.

The Court of Appeals then added a discussion of the standard of review on mandamus specific to the novels. The Court of Appeals observed how truly remarkable it is for a judge presiding over a case to write novels regarding such a closely related subject matter: "To our knowledge, no court—apart from the district court that initially denied mandamus in this case—has ever analyzed [the duty to recuse when a judge's impartiality might reasonably be questioned] on facts like these." *Id.* The Court of Appeals indicated that the unprecedented nature of this book writing made granting mandamus more difficult, because the right to relief has to be "clear and indisputable," making mandamus an inapt setting to consider issues not previously decided by the appellate courts. *Id.* The Court of Appeals emphasized that the Movants may have shown

"possible error," but until direct appeal and in the mandamus setting then presented showing error is insufficient: Only "clear and indisputable error" will do. *Id.* And the Court held that even that high bar is surrounded by another layer of deference, as the Court of Appeals will not reverse a District Court's refusal to issue mandamus unless it "abused its discretion" in failing to find "clear and indisputable error." *Id.*

The Movants sought to bring the panel's revised opinion to the *en banc* court, noting the nationwide split of authority over the standard of review applicable to the mandamus petition challenging a lower court judge's refusal to recuse. *Dondero v. Jernigan*, No. 24-10287 (5th Cir.), Dkt. 149. After several weeks, the Court of Appeals denied that *en banc* petition. *Id.*, Dkt. 152. The Movants will be seeking Supreme Court review.

ARGUMENT

The Court of Appeals declined to reverse the District Court and to require it to issue mandamus relief directing the recusal of this Court. The Court of Appeals's principal reason for doing so was the extremely demanding showing required for mandamus relief: That the lower clear "*clearly and indisputably* erred." *Dondero v. Jernigan*, 2025 WL 1122466, at *7. Against this standard, even "a strong argument [that this Court] had a duty to recuse" will not result in mandamus requiring recusal. *Id*.

The Court of Appeals's discussion of the high threshold for mandamus relief is juxtaposed with how the recusal decision will be reviewed on direct appeal. On direct appeal, decisions not to recuse are reviewed for an abuse of discretion. *Steering Comm. v. Mead Corp. (In re Corrugated Container Antitrust Litig.)*, 614 F.2d 958, 960-62 (5th Cir. 1980).[1] But, at the direct appeal stage,

[1] Abuse of discretion is not the standard of review in other courts of appeals, where decisions not to recuse are reviewed *de novo*. *See*, *e.g.*, *In re Sherwin Williams Co.*, 607 F.3d 474, 477 (7th Cir. 2010). Those courts have explained that the duty to recuse, when a judge's impartiality may

parties need not show that the lower court "clearly and indisputably erred" in declining to recuse. *Id.* at 960–62 & n.4 (comparing the more lenient standard of review when a recusal decision is addressed after litigation is final with the "exceptional circumstances amounting to a judicial usurpation of power" required for mandamus); *In re Moody*, 755 F.3d 891, 897 (11th Cir. 2014) (explaining that review of district court judge's refusal to recuse under mandamus authority was "even more stringent" than the ordinary abuse-of-discretion standard applicable to review on appeal of a recusal issue). And strong arguments that the lower court had a duty to recuse are more likely to lead to reversible error on direct appeal. A judge's failure to recuse when required by statute renders each of the court's rulings below error, because the litigants were deprived of an impartial judge.[2]

The Court of Appeals explained that the law on the standard of review creates a category of decisions that will not be reversed on mandamus in the middle of the case, but that will be reversed on direct appeal at the end of the case. This Court's recusal decision is very likely in that category. In undertaking its analysis, the Court of Appeals is providing this Court with a window of time to correct itself with respect to its recusal decision and to step back from this case. That opportunity is an artifact of the posture of this case. Rarely do lower courts receive such a clear forecast from a reviewing court regarding the likely result in a later direct appeal.

Considerations of judicial economy and preserving confidence in the judicial system strongly counsel in favor of recusal and allowing another judge—whose impartiality cannot

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be reasonably questioned, is a statutory mandate, and that the standard of review should therefore not refer to the court's discretion in making such a decision. *Id.*; *see also* 28 U.S.C. § 455(a) ("Any justice, judge, or magistrate judge of the United States *shall* disqualify himself in any proceeding in which his impartiality might be reasonably questioned.") (emphasis added).

[2] In this case, the Court should have recused itself the moment that it began writing novels about the parties and issues in this case.

reasonably be questioned—to take over this matter. Moreover, the Court should vacate all of its orders and decisions in this case taken since the day the Court began writing its novels.

DATED: August 15, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 15, 2025, this document was served on ECF participants, electronically through the Court's ECF System.

/s/ Geoffrey S. Harper

CERTIFICATE OF CONFERENCE

I certify that on August 15, 2025, I conferred with Jeff Pomerantz and Greg Demo, Counsel to Highland Capital Management, L.P. and the Highland Claimant Trust and they oppose the relief requested in this Motion.

/s/ Jonathan F. Mitchell (with permission)

Reply Exhibit 2

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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed September 2, 2025

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:	§	
	§	
HIGHLAND CAPITAL MANAGEMENT,	§	**CASE NO. 19-34054-SGJ-11**
L.P.,	§	**(Chapter 11)**
Reorganized Debtor.	§	

ORDER DENYING FIFTH MOTION TO RECUSE JUDGE
[DE # 4372]

On August 15, 2025, another motion to recuse the presiding bankruptcy judge ("Presiding Judge") in the main bankruptcy case of Highland Capital Management, L.P. ("Highland" or "Reorganized Debtor")—now approximately six years since the bankruptcy case's filing in October 2019—was filed by James Dondero, NexPoint Advisors, L.P., NexPoint Asset Management, L.P., NexPoint Real Estate Partners, LLC, The Dugaboy Investment Trust, and the Get Good Trust. These Movants have now filed five motions to recuse in the last four-and-a-half

years.

First Motion to Recuse. *See* DE ## 2060, 2061, & 2062 (this first one was filed approximately 17 months post-petition, and one month after the bankruptcy court confirmed Highland's Chapter 11 plan, and two business days before the bankruptcy court was scheduled to hear a motion of Highland to hold James Dondero in contempt of a TRO). The bankruptcy court denied this first motion, in an Order dated March 23, 2021, DE # 2083. Movants appealed this Order, and that appeal was dismissed by the District Court for lack of jurisdiction on February 9, 2022 (Case No. 3:21-cv-0879-K, 2022 WL 394760).

Second Motion to Recuse. *See* DE ## 3406, 3470, and 3471 (this second one was originally filed on July 20, 2022, approximately five months after the District Court dismissed the appeal of the Order denying the First Motion to Recuse, and six days after the Fifth Circuit ruled on the appeal of the Highland confirmation order, affirming in substantial part the Plan and then amended on August 25, 2022). After a status conference, on September 1, 2022, the bankruptcy court issued an order denying the Second Motion to Recuse for procedural defects. DE # 3479.

Third Motion to Recuse. *See* DE ## 3570 & 3571 (this third one was filed approximately six weeks later, on October 17, 2022; this was 10 days after the Fifth Circuit had issued, on October 7, 2022, a denial of a request for a stay in connection with its ruling on the Highland Plan and confirmation order; there also happened to be a petition for *writ of certiorari* pending at the U.S. Supreme Court regarding the Plan and confirmation order). More than 7,000 pages of material were submitted in connection with this Third Motion to Recuse. The bankruptcy court denied this

Third Motion to Recuse, in a 36-page Memorandum Opinion and Order, entered March 6, 2023. DE ## 3675 and 3676. Movants filed petitions for writ of mandamus at both the District Court and the Fifth Circuit, which were denied, first, in an unpublished decision at the District Court, DE # 25 (Case No. 3:23-cv-0726-S), and then again at the Fifth Circuit, on November 5, 2024 (No. 24-10287, 2024 WL 4678879), and then again on a motion for rehearing at the Fifth Circuit on April 16, 2025 (No. 24-10287, 2025 WL 1122466).

Fourth Motion to Recuse. Meanwhile, a fourth Motion to Recuse was filed on February 27, 2023, in a separate Adversary Proceeding #21-3076, DE ## 309 and 310, by one of the same Movants herein, that happened to be named as a defendant in that adversary proceeding. That adversary proceeding was thereafter abated, when parties represented that there might be enough funds to pay off creditors in full in the Highland bankruptcy case, without pursuing the adversary proceeding. Thus, that fourth Motion to Recuse was never ruled on. However, in ruling on the Third Motion to Recuse, the bankruptcy court addressed arguments made in the Fourth Motion to Recuse.

Fifth Motion to Recuse. The pending Motion to Recuse, DE # 4372, happened to be filed just weeks after the bankruptcy court approved a global settlement, DE # 4297, with Hunter Mountain Investment Trust, the former 99.5% owner of Highland, which one of the Movants (Dugaboy Trust) opposed, DE # 4230, and, with regard to which, Dugaboy unsuccessfully sought a stay pending appeal at the bankruptcy court, DE ## 4311, 4326, and 4334, and at the district court. Apparently, the Movants are now in contentious litigation with Hunter Mountain Investment Trust's manager, Mark Patrick, in numerous fora around the world. DE # 4326.

RULING

Two words: *res judicata*. The matter has been decided. The purpose of the *res judicata* doctrine is to avoid waste of judicial resources by preventing courts from hearing the same disputes multiple times and to protect litigants from being subjected to multiple lawsuits over the same matter. Nothing new has been raised by the latest motion to recuse. The court set forth the history/time table above to make two points: (a) that the matter has been decided; and (b) the series of motions to recuse always seem to be raised when adverse rulings have recently been rendered or perhaps seem imminent. In any event, this fifth Motion to Recuse has failed to present any objective manifestations of bias or prejudice. The court does not believe any of the assertions of the Movants rise to "the threshold standard of raising a doubt in the mind of a reasonable observer" as to the judge's impartiality. This court does not believe that any objective person would find that the Movants are the victims of improper judicial conduct rising to the extraordinary remedy of recusal. Wherefore,

IT IS ORDERED that the newest (fifth) Motion to Recuse, DE # 4372, be, and hereby is, **DENIED**.

END OF ORDER