Docket #0061 Date Filed: 8/6/2026

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

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
MARC S. KIRSCHNER, AS LITIGATION TRUSTEE OF THE LITIGATION SUB-TRUST, **Plaintiff,** **v.** **JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; HUNTER MOUNTAIN INVESTMENT TRUST; CLO HOLDCO, LTD.; CHARITABLE DAF HOLDCO, LTD.; CHARITABLE DAF FUND, LP.; HIGHLAND DALLAS FOUNDATION; RAND PE FUND I, LP, SERIES 1; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; and SAS ASSET RECOVERY, LTD.** **Defendants.**	Adv. Pro. No. 21-03076-sgj **Civil Action No. 3:22-CV-203-S** *Consolidated with:* Case No. 3:22-CV-229 Case No. 3:22-CV-253 Case No. 3:22-CV-367 Case No. 3:22-CV-369 Case No. 3:22-CV-370

DEFENDANTS' MOTION IN SUPPORT OF PROPOSED SCHEDULING ORDER

Defendants NexPoint Advisors, L.P., NexPoint Asset Management, L.P. f/k/a Highland Capital Management Fund Advisors, L.P., James Dondero, The Dugaboy Investment Trust, Get Good Trust, Strand Advisors, Inc., Scott Ellington, and Isaac Leventon (collectively, "Defendants"), file this Motion in Support of Proposed Scheduling Order and will show as follows:

1934054260807000000000003

I. GROUNDS FOR MOTION

On July 15, 2026, the Court entered an order directing the parties to file a proposed scheduling order by July 29, 2026. Dkt. No. 53. Despite attempts to negotiate and agree on a scheduling order with appropriate deadlines, the parties could not come to an agreement. As discussed below, the central disagreement between the parties was the length of time it will take the parties to complete discovery and be ready for trial. Accordingly, Defendants submit a competing Proposed Scheduling Order, attached as Exhibit 1.

By way of background, this proceeding was filed on October 15, 2021, by Plaintiff Mark S. Kirschner, the Litigation Trustee of the Litigation Sub-Trust (the "Litigation Trustee"), who was the post-confirmation plan trustee appointed under the confirmed Chapter 11 plan for Highland Capital Management, L.P. ("Highland"). The 140-page complaint sought hundreds of millions of dollars in damages. There were initially 23 defendants and 36 causes of action.

On March 24, 2023, the Litigation Trustee requested that the bankruptcy court stay this proceeding in the interest of judicial economy. On April 4, 2023, the bankruptcy court granted that request, staying the proceeding until any party provided 30 days' written notice of their intent to resume the proceeding.

On February 10, 2026, Plaintiff Hunter Mountain Investment Trust ("Plaintiff"), as the purported assignee from the Litigation Trustee, filed a Motion to Reopen Case and Request for Status Conference. Dkt. No. 32. On March 4, 2026, the Court issued an order, granting the Motion in part and reopened the case. Dkt. No. 34.

Subsequently, the Court entered an order requiring the parties to submit a proposed scheduling order. Per the Court's direction at the May 6, 2026, status conference, discovery was not to proceed until the resolution of Defendants' forthcoming motions pursuant to Federal Rule of Civil Procedure 12 ("Rule 12 Motions").

If and when discovery is reopened after resolution of the Rule 12 Motions, the parties will need adequate time to complete necessary discovery for trial and prepare for trial. The parties could not agree on the amount of time needed to complete these tasks.

The Second Amended Complaint is as complex and unwieldly as the prior version. It has 148 pages, 31 counts and 13 defendants. It is still massive and now requires careful analysis to determine the import of any of the dozens of changes. The discovery necessary to defend the claims was not completed (or in many respects even started) before the stay of the case was imposed and remains to be completed. Plaintiff is extremely unrealistic about the time needed.

Specifically, Plaintiff proposed that, after discovery resumes, fact document discovery be substantially completed within a mere 30 days, fact depositions be completed 120 days after the completion of document discovery, and a jury trial be scheduled for 14 months after the Court rules on any Rule 12 Motions.

Defendants, on the other hand, believe that Plaintiff's proposed timeline is impossible to meet for several reasons. First, this is a complex case that will necessitate an extremely large and unusual amount of discovery. The case involves dozens of parties and claims and the transactions at issue are complex. In his own Initial Disclosures, the Litigation Trustee, as Plaintiff, identified the following subjects that will be relevant to this proceeding:

- The creation of Highland Capital Management, L.P. ("HCMLP" or "Highland");
- HCMLP's performance, deterioration, and financial position during the 2008 financial crisis
- Litigation with UBS, Citi, and Barclays PLC;
- SEC investigations into HCMLP;
- The supposed "lifeboat" entities that siphoned business away from HCMLP;

- HCMLP's alleged insolvency at over twenty-one (21) points in time spread over a ten-year period;

- HCMLP's shared service agreements (or lack thereof) with the so-called "lifeboat" entities;

- HCMLP's financial arrangements with the so-called "lifeboat" entities;

- Defendants' alleged misappropriation of HCMLP funds;

- Defendants' alleged misconduct and mismanagement exposing HCMLP to liability;

- Defendants' fraudulent inducement of the HarbourVest investment;

- Defendants' alleged schemes resulting in HCMLP's liability to the Redeemer Committee and Crusader Funds;

- Defendants' alleged schemes resulting in HCMLP's liability to UBS;

- Defendants' alleged schemes resulting in HCMLP's liability to Acis, Terry, and HarbourVest;

- Defendants' alleged schemes resulting in HCMLP's liability to Daugherty;

- Alleged commingling and exploitation of entities within the Highland web for Dondero's benefit;

- The HE 232 transaction;

- Distributions of HCMLP assets to Defendants;

- Transfers from HCMLP to Massand;

- The Hunter Mountain Transaction;
- The Tall Pine Transaction;
- Numerous personal expense claims alleged to be fraudulent transfers; and
- Employee compensation alleged to be unjust enrichment.

In all, there are at least fifteen (15) unique transactions, including several, such as alleged fraudulent distributions to equity, that took place over years. As a result, the parties have identified over 100 individuals in their disclosure response that are likely to have discoverable information. No depositions have been taken in this proceeding.

With respect to the volume of relevant documents related to this proceeding, the parties have already produced millions of pages of documents without even coming close to completing document production. There are approximately 43 third parties that were served with subpoenas prior to the stay, and those subpoenas will need to be served again so that third-party discovery can properly proceed. Only one party had produced documents in response to its subpoena before the stay halted discovery.

Second, obtaining all the necessary discovery will be unusually difficult because it is not in the possession of the parties in this proceeding. The primary repositories of documents are with Highland and with its former service providers. The pending claims in this litigation relate largely to actions taken from 2010 to 2020. Defendants have no access to pre-2020 business records from their former affiliate and/or employer Highland. Plaintiff took assignment of the claims at issue in this litigation "as-is" without the underlying documents. Third-party subpoenas will need to be served on an even greater number of third parties, many of which are adverse to the parties here and have indicated that they will not easily comply with subpoenas.

Importantly, the vast majority of the relevant documents are under the control of the Litigation Trustee or Highland. Neither of them is a party to this proceeding after the assignment of the Litigation Trustee's claims to Plaintiff. When this proceeding was stayed, document production by the Litigation Trustee and Highland had not been completed. Therefore, it will be burdensome and time consuming to obtain documents necessary to prepare for trial. Furthermore, Highland indicated that it was not transferring its privilege with the claims, which means there likely will be a privilege dispute with respect to, at a minimum, the claims in this case that are against Highland's former attorneys. In sum, this is not the typical case where the parties have relevant documents in their possession and can easily complete the document production process.

Therefore, Defendants proposed that fact document discovery be substantially completed eight months after the Court's ruling on Rule 12 Motions, fact depositions be completed six months after the completion of fact document discovery, and a jury trial be scheduled 12 months after the end of the time period for fact depositions, with additional deadlines for expert disclosures and dispositive motion practice to be added within that 12-month time period. Defendants' Proposed Scheduling Order is attached as Exhibit A. Given the reasons discussed above, Defendants believe that the deadlines and trial setting in the Proposed Scheduling Order are more workable than the deadlines proposed by Plaintiff and will allow the parties to efficiently complete discovery and be ready for trial without being forced to seek a continuance to obtain additional discovery.

II. CONCLUSION

Therefore, Defendants request that the Court enter the Proposed Scheduling Order submitted with this motion and grant Defendants any other necessary relief.

August 6, 2026

Respectfully submitted,

STINSON LLP

/s/ Deborah Deitsch-Perez
Deborah Deitsch-Perez
Texas State Bar No. 24036072
Michael P. Aigen
Texas State Bar No. 24012196
2200 Ross Avenue, Suite 2900
Dallas, Texas 75201
Telephone: (214) 560-2201
Facsimile: (214) 560-2203
deborah.deitschperez@stinson.com
michael.aigen@stinson.com

Counsel for Defendants NexPoint Advisors, L.P. and NexPoint Asset Management, L.P. f/k/a Highland Capital Management Fund Advisors, L.P.

/s/ Amy L. Ruhland
Amy L. Ruhland
Texas Bar No. 24043561
amy.ruhland@pillsburylaw.com
PILLSBURY WINTHROP SHAW PITTMAN LLP
401 W 4th Street, Suite 3200
Austin, TX 78701
(512) 580-9600

Attorneys for James Dondero, The Dugaboy Investment Trust, Get Good Trust, and The Strand Advisors, Inc.

/s/Debra A. Dandeneau
Michelle Hartmann
State Bar No. 24032402
BAKER & MCKENZIE LLP
1900 North Pearl, Suite 1500
Dallas, Texas 75201
Telephone: 214-978-3000
Facsimile: 214-978-3099
Michelle.hartmann@bakermckenzie.com

and

Debra A. Dandeneau
Blaire Cahn
BAKER & MCKENZIE LLP
452 Fifth Ave
New York, NY 10018
Telephone: 212-626-4100
Facsimile: 212-310-1600
Debra.dandeneau@bakermckenzie.com
Blaire.cahn@bakermckenzie.com
(Admitted pro hac vice)

Counsel for Scott Ellington and Isaac Leventon

CERTIFICATE OF CONFERENCE

I conferred with opposing counsel regarding the relief sought herein and he opposes the relief requested in this Motion.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on August 6, 2026, a true and correct copy of this document was served electronically via the court's CM/ECF system.

/s/Deborah Deitsch-Perez
Deborah Deitsch-Perez

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

In re: HIGHLAND CAPITAL MANAGEMENT, L.P., Reorganized Debtor.	Chapter 11 Case No. 19-34054-sgj11
HUNTER MOUNTAIN INVESTMENT TRUST, Plaintiff, v. JAMES D. DONDERO; SCOTT ELLINGTON; ISAAC LEVENTON; GRANT JAMES SCOTT III; STRAND ADVISORS, INC.; NEXPOINT ADVISORS, L.P.; HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P.; DUGABOY INVESTMENT TRUST AND NANCY DONDERO, AS TRUSTEE OF DUGABOY INVESTMENT TRUST; GET GOOD TRUST AND GRANT JAMES SCOTT III, AS TRUSTEE OF GET GOOD TRUST; MASSAND CAPITAL, LLC; MASSAND CAPITAL, INC.; AND SAS ASSET RECOVERY, LTD., Defendants.	Adv. Pro. No. 21-03076-sgj **Civil Action No. 3:22-CV-203-S** *Consolidated with:* Case No. 3:22-CV-229 Case No. 3:22-CV-253 Case No. 3:22-CV-367 Case No. 3:22-CV-369 Case No. 3:22-CV-370

DEFENDANTS' PROPOSED SCHEDULING ORDER

Pursuant to Rule 16(b) of the Federal Rules of Civil Procedure ("FRCP"), the Local Civil Rules of the United States District Court for the Northern District of Texas ("LR"), and the Civil Justice Expense and Delay Reduction Plan of the United States District Court for the Northern District of Texas, the Court **ORDERS** as follows:

1. This case is set for **JURY** trial on the Court's three-week docket beginning **the Monday following the expiration of 26 Months after the Court rules on Defendants' Consolidated Rule 12 Motion** ("Trial Setting"). Trial may commence any time during this three-week docket. If the case is not reached at this setting, it will be reset after considering input from the parties. Reset or continuance of the Trial Setting does not alter the deadlines in this Order unless expressly provided by court order.

2. The parties shall mediate this case before **Hon. Harlin Hale (Ret.)** ("Mediator") at least 90 days before the Trial Setting. The parties may not eliminate this requirement or substitute the Mediator except by leave of court. All parties must attend the mediation in person or by videoconference, as directed by the Mediator. Legal entities must provide a representative with full authority. If there is insurance involved, a representative with full authority must attend. The Mediator shall contact the Court directly if this deadline needs to be extended or if other requirements need to be altered.

3. The parties may, by written agreement, alter the following deadlines without the need for court order:

Event	Deadline
Deadline to File Amended Complaint	August 5, 2026
Deadline to File Consolidated Rule 12 Motion	September 16, 2026
Deadline to Respond to Rule 12 Motion	October 28, 2026

Event	Deadline
Deadline to File Reply in Support of Rule 12 Motion	November 18, 2026
Substantial Completion of Fact Document Discovery	8 Months After Ruling on Rule 12 Motion
Completion of Fact Depositions[1]	6 Months After Substantial Completion of Fact Discovery
Deadline to Disclose Experts and Exchange Reports for Parties with the Burden of Proof	2 Months After Completion of Fact Depositions
Deadline to Disclose Opposing Experts and Exchange Reports	2 Months After Disclosure of Affirmative Experts
Deadline to Disclose Rebuttal Experts and Exchange Reports	2 Months After Disclosure of Opposing Experts
Discovery Closes; discovery requests must be commenced in time to permit response by this date.	30 Days After Disclosure of Rebuttal Experts

4. All dispositive motions, including any objections to expert testimony, must be filed no later than **30 Days after discovery closes**. Parties may not alter this deadline by agreement.

5. A motion or objection to the taking of a deposition that is filed within five business days of the notice has the effect of staying the deposition pending court order on the motion or objection; otherwise, the deposition will not be stayed except by court order.

[1] Discovery will not commence until after the Court has resolved all pending motions to dismiss. However, this is without prejudice to the right of any party to seek leave of court to conduct earlier discovery.

6. The parties shall file all pretrial materials 21 days before the Trial Setting. Failure to timely file pretrial materials may result in dismissal for want of prosecution. Pretrial materials shall include the following:

a. Pretrial order pursuant to LR 16.4;

b. Exhibit lists, witness lists, and deposition designations pursuant to LR 26.2 and FRCP 26(a)(3). Witness lists should include a brief summary of the substance of anticipated testimony (not just a designation of subject area) and the likelihood of testimony at trial. Exhibit lists must include any materials to be shown to the jury, including demonstrative aids;

c. Proposed jury charge or proposed findings of fact and conclusions of law. Such documents shall be both e-filed and emailed in "Word" format to Scholer_Orders@txnd.uscourts.gov. Any objections to the proposed jury charge shall be filed no later than five days before the final pretrial conference. Objections not so disclosed are waived unless excused by the Court for good cause;

d. Motions in limine;

e. Requested voir dire questions.

7. The pretrial conference shall be held **7 Days before Trial, at 1:30 p.m.** Lead counsel must attend. The parties shall be prepared to address all exhibits, witnesses, deposition excerpts, motions in limine, trial briefs, requested voir dire questions, and any objections to such filings. The Court expects the parties to have conferred and to reach agreement where possible prior to the final pretrial conference.

8. Continuance of the Trial Setting, dispositive motions deadline, and/or the final pretrial conference requires leave of court with a showing of good cause. Motions may become moot due to trial if filed after the deadlines in this Order.

SO ORDERED.

SIGNED _____, 2026.

_____

KAREN GREN SCHOLER
UNITED STATES DISTRICT JUDGE