Case No. 3:26-cv-02315-X

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.

Appellee

On Appeal from the United States Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-sgj11

BRIEF OF APPELLANT THE DUGABOY INVESTMENT TRUST

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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 Michael J. Edney, Martha B. Stolley, and Avery Joseph Welker of Morgan, Lewis & Bockius LLP; Steven H. Stodghill, Geoffrey S. Harper, and John Michael Gaddis of King & Spalding LLP; Michael Burrage of Whitten Burrage; and Johnny Sutton of Ashcroft Sutton.

4. Highland Capital Management, L.P., the Highland Claimant Trust, the Highland Litigation Sub-Trust, and the Hunter Mountain Investment Trust are the Appellees in this Appeal.

5. Highland Capital Management, L.P., the Highland Claimant Trust, and the Highland Litigation Sub-Trust are represented by John A. Morris, Jeffrey Nathan Pomerantz, and Gregory Vincent Demo of Pachulski Stang Ziehl & Jones

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6. The Hunter Mountain Investment Trust is represented by Louis M. Phillips and Amelia L. Hurt of Kelly Hart & Hallman LLP.

7. Appellant Dugaboy reserves the right to amend or supplement this Certificate of Interested Persons and Corporate Disclosures if necessary or appropriate.

Dated: October 1, 2026

Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

This is a case that goes directly to the integrity of the judicial system. Given the complexity of the legal issues and the lengthy factual record and procedural history, Appellant respectfully requests oral argument.

STATEMENT OF JURISDICTION

The United States Bankruptcy Court for the Northern District of Texas exercised jurisdiction under 28 U.S.C. § 157(b)(1). On June 15, 2026, the bankruptcy court entered an order (R. 016459, Bankr. Dkts. 4678, 4679) denying Appellant The Dugaboy Investment Trust's ("Dugaboy") *Motion for Relief from Order and Motion to Vacate* ("Rule 60(b) Motion"). Bankr. Dkt. 4513.

On June 29, 2026, Dugaboy timely filed its Notice of Appeal from that Order. R. 000001; Bankr. Dkt. 4685.

The bankruptcy court's denial of the Rule 60(b) motion constitutes a final appealable order. *In re Bartee*, 212 F.3d 277, 281–82 (5th Cir. 2000). This Court has jurisdiction under 28 U.S.C. § 158(a)(1) over this Appeal from a final decision of the bankruptcy court.

INTRODUCTION

This Court should reverse the bankruptcy court's June 15, 2026, order denying Appellant The Dugaboy Investment Trust's motion to vacate approval of a settlement between Highland Capital Management, L.P., and associated entities and the

Hunter Mountain Investment Trust and associated entities, pursuant to Federal Rule of Civil Procedure 60(b). R. 016459, Bankr. Dkt. 4678.

When a company in bankruptcy wishes to settle with a third party, it must first seek the approval of the bankruptcy court. Fed. R. Bankr. P. 9019. It has long been the law across the Nation that bankruptcy courts will withhold that approval if the settlement is the product of or affected by fraud or collusion. And that makes sense. Bankruptcy courts are courts of equity. A debtor is entrusted to the bankruptcy court's care. And the bankruptcy court has responsibility to ensure that neither the court nor the debtor becomes associated with fraud or misconduct and that a proposed settlement does not advance or deal in the fruits of fraud or misconduct.

The bankruptcy court below does not believe it has these responsibilities. Yes, the bankruptcy court below understood it must review proposed settlements with the debtor and approve or decline them. But the bankruptcy court below held that its role in approving a settlement is very limited. First, it should take only the lightest touch in looking over what the debtor and a counterparty have agreed. And second, fraud and misconduct by the counterparty to the settlement—by the party that is not the debtor company—is categorically not relevant to whether the settlement is approved.

Both legal rulings are major errors, and the circumstances of this case so demonstrate. This appeal arises from the protracted bankruptcy proceedings of

Highland Capital Management. Highland was founded by James Dondero and became one of the most successful investment and hedge funds in the country. The company entered bankruptcy when it encountered an unexpected judgment and needed time to sell some assets to satisfy it. The bankruptcy case was supposed to be short and send Highland promptly back to normal operations. It became a mess. Bankruptcy Judge Stacey Jernigan demanded on day one, because of previously conceived negative opinions about Mr. Dondero, that he be removed from managing Highland during the bankruptcy. Bankruptcy professionals took over Highland and began saying—surprise—that the bankruptcy process should not be quick and claiming that Highland was somehow insolvent and had to be liquidated, with the professionals collecting hundreds of millions along the way.

That was not true. Highland had more than enough to pay all its creditors, even when they inflated their claims. That left behind a significant residual value for those who owned Highland and raised serious questions about what the bankruptcy professionals were doing in the first place.

Enter Mark Patrick to make matters worse. A decade and a half ago, Mr. Dondero generously had set up two structures to give back to his community and country and to build a charitable legacy that would outlive him. To one of those structures—centered around an entity called the Hunter Mountain Investment Trust—Mr. Dondero and his co-founder gave much of their equity stake in Highland.

This generous transfer was meant to benefit a 100-year-old charity, The Dallas Foundation. To the other, Mr. Dondero made a gift that grew to more than $270 million in assets, again for the benefit of The Dallas Foundation and three other established charities.

The caretakers of both structures retired in 2021 and 2022, and Mark Patrick volunteered to take over. Starting in earnest in 2024, he used his position of trust to steal both structures' assets, larding them into a sham "charity" of his own run from his basement. He did so through a secret corporate restructuring that ended up divorcing four charities from hundreds of millions of dollars in assets.

He told not a soul of what he had done and told lies and took other active steps to conceal his misconduct. By March 2025, he had completed his theft, which then still was a secret. And then he started in on the bankruptcy professionals the court had put in charge of Highland. He approached them about a settlement, purporting to act on behalf of much of the equity ownership in Highland. Highland's bankruptcy managers and Patrick struck a deal and took it to the bankruptcy court in May 2025. A little more than a month later, the bankruptcy court approved the settlement over the objections of Dugaboy and others.

Unbeknownst to anyone other than Patrick, his co-conspirators—and perhaps Highland's bankruptcy professional managers—Patrick was not there to act in the best interests of the charity to which the equity in Highland was given or to maximize

the value of Mr. Dondero's gift to do good works. He had already restructured the charitable structures to kick the charities out of them, placing his sham charity at the top. Along the way, over just a couple of quarters, he had converted charitable assets into more than $12 million in compensation for himself. When he was dealing away the rights of Hunter Mountain, which was supposed to be owned by one of Dallas's most established charities, he was peddling stolen goods.

The only way his theft came to light was proceedings in the Cayman Islands, where the court appointed a receiver over one of the entities in the charitable structures. The receiver was able to step into the shoes of that entity and obtain previously secret documents showing what Mr. Patrick was up to. They revealed, for the first time, the breathtaking scope of his fraud.

The Dugaboy Investment Trust, a family trust for Mr. Dondero's benefit, asked the Court to pause and then to vacate the settlement in the wake of Mr. Patrick's misconduct being revealed. The bankruptcy court (Judges Jernigan and Odell, respectively) declined each request. Both decisions were error, and the latter is before this Court.

In the decision not to vacate the settlement approval, the court incorrectly held that the new evidence of Mr. Patrick's misconduct was not the court's business, because he was acting only on behalf of a counterparty.

As it turns out, that a settlement would associate the court or the debtor with such misconduct is reason enough to reject it as a matter of law. In this case, because of the importance of having someone trustworthy act as shepherd of assets meant for the benefit of specified charities, the Hunter Mountain Investment Trust Agreement automatically removed an administrator who engaged in certain types of misconduct or breaches of fiduciary duty in any capacity. Mr. Patrick's nine-figure theft blew through these constraints. The new evidence—revealed through the Cayman proceedings—showed that Mr. Patrick had been stripped of his authority to act on Hunter Mountain's behalf before he came to the bankruptcy court seeking approval of that entity's settlement with the debtor.

Highland's bankruptcy managers and Patrick responded to efforts to vacate the settlement with an old saw of fraudsters that should turn the stomachs of the righteous: "You should have caught us earlier." They told an unconvincing story of a series of breadcrumbs that the curious should have followed to the dank cave in which Mr. Patrick was committing his fraud. That the court-appointed managers of Highland advanced defenses of Patrick's perfidy is yet the latest indication that they have lost their way.

The bankruptcy court adopted a version of this story, and that was error too. The bankruptcy court said that Mr. Dondero knew, before the June 2025 hearing approving the settlement, that Mr. Patrick was not a saint. After all, in April 2025,

Mr. Dondero signed an affidavit detailing compliance lapses Patrick committed while working for him in various capacities. He was sort of bad before and Mr. Dondero did not act to remove him from his Hunter Mountain position then—the bankruptcy court reasoned—so he could be really bad later and still keep his job. Because there was evidence of some, different, lesser misconduct earlier, new evidence of grave sins of a different category and order of magnitude later did not constitute "newly discovered evidence" for purposes of vacating a judgment under Federal Rule of Civil Procedure 60.

The bankruptcy judge was making new law . . . but not correct law. Courts have long and consistently held that parties do not lose the right to enforce contractual protections against massive breaches, when they do not act against earlier venial lapses. Nor should those committed to justice want that to be the law: It would encourage wrongdoers to test the waters, see what little stuff they can get away with, and then know they can commit grave crimes later if their prior shortcomings did not have immediate consequences.

On top of all this, the settlement approval should have been vacated because there was no properly functioning judicial officer to approve it in June 2025. The Appellant previously had moved for Judge Jernigan to recuse herself, because of her novel writing about Mr. Dondero and trashing the hedge fund industry, well before she approved the settlement at issue here. When she declined, the Appellant sought

the extraordinary relief of mandamus. The Fifth Circuit declined to intervene in the middle of the case, but signaled it would when a final appealable order arrived: It observed that there was "a strong argument" that Judge Jernigan had a "duty to recuse" because of her extrajudicial novelist hobby. *Dondero v. Jernigan*, No. 24-10287, 2025 WL 1122466, at *7 (5th Cir. Apr. 16, 2025). When Judge Jernigan did not immediately take the hint to get out, the Fifth Circuit Judicial Council arranged for her recusal going forward, leaving it to appellate courts like this one to decide what the effect should be on historical orders after she declined to recuse. The identity of the judge who approved the settlement is grounds alone to vacate it, and the replacement bankruptcy judge erred in not doing so.

That the judge approving the settlement in 2025 was compromised counsels special scrutiny of the order through mechanisms such as Rule 60. And so does that she and the replacement judge are Article I judges. As explained below, this Court should not defer to the order below and review it *de novo*, taking live evidence if necessary. That is the import of the Supreme Court's decision last term interpreting the Constitution's Appointments Clause.

STATEMENT OF ISSUES

1. Whether the bankruptcy court erred by holding misconduct or fraud committed by a counterparty to the debtor is not pertinent to approving a settlement between the two under Federal Rule of Bankruptcy Procedure 9019.

2. Whether the bankruptcy court erred by deferring to a settlement arranged by court-appointed bankruptcy professionals as if they were debtors in possession who had incentive to maximize the estate's residual value to its equity holders.

3. Whether the bankruptcy court erred when it determined that the evidence presented of Mark Patrick's massive theft of charitable assets was not newly discovered because an April 2025 affidavit detailed lesser and different prior compliance lapses by Mr. Patrick.

4. Whether the bankruptcy court erred by declining to consider a counterparty official's misconduct as not relevant to determining fraud or misconduct warranting vacatur under Federal Rule of Civil Procedure 60(b)(3) and by overlooking Hunter Mountain and Highland's obfuscation of crucial evidence prior to the June 2025 settlement approval.

5. Whether the bankruptcy court erred in declining to vacate the settlement approval order because the judge should have recused before entering it.

6. Whether a bankruptcy court's findings should be reviewed *de novo*, rather than deferentially, given the Supreme Court's recent decision that all exercising government authority must be subject to plenary supervision by the President or some other office expressly listed in the Constitution, such as Article III judges.

7. Whether the bankruptcy court committed various evidentiary errors, including limiting discovery and precluding Mr. Dondero from testifying in Dugaboy's case in chief.

STATEMENT OF THE CASE

A. James Dondero Establishes Two Charitable Structures to Do Good

James Dondero and Mark Okada founded Highland Capital Management in 1993. R. 000654. Highland and Mr. Dondero's other investment businesses were a success, and Mr. Dondero wanted to use the fruits of that success to do good, for decades to come. R. 000655.

In 2011, Mr. Dondero created a tax-advantaged charitable structure called "Charitable DAF." *Id.* The Charitable DAF was created to be owned by and support four long-established charities: The Dallas Foundation, The Greater Kansas City Community Foundation, Santa Barbara Foundation, and Community Foundation of North Texas. R. 000665. The Charitable DAF was structured to have Mr. Dondero make assets available for charity and to retain a voice in how they are invested and the good works to which they are ultimately deployed.

Prior to 2023, this structure was a massive success. From an initial gift of $35 million, the Charitable DAF's assets grew to more than $325 million, from which $55 million were dedicated to good works and more than $270 million remained. R. 000656. The Charitable DAF had supported the noblest of causes, including

assisting Mr. Dondero in becoming one of the Nation's biggest benefactors of veterans injured in the Global War on Terror, standing up Christo Rey High School for disadvantaged youth in Dallas, and serving as the anchor donor for the President George W. Bush Presidential Library.

In 2015, Mr. Dondero and the equity stakeholders in Highland created another charitable structure to support The Dallas Foundation. *Id.* A core part of this structure was the Hunter Mountain Investment Trust, to which Mr. Dondero and his co-founder gave most of their equity ownership stakes in Highland. R. 000657–59.

Both the Charitable DAF and the Hunter Mountain had a caretaker, separate from the ultimate charitable owners of the assets. In both cases, the caretaker was bound to strict fiduciary duties such as to act in the best interests of the charities and in a manner consistent with the intent of the donors. R. 008486–87. In the case of the Hunter Mountain structure, additional protections were put in place to ensure that the caretaker would always be of the utmost integrity. The Hunter Mountain Trust Agreement thus provided for automatic removal of an administrator if he engaged in breaches of fiduciary duty, dishonesty, fraud, willful misconduct, bad faith, or theft "in any capacity." R. 008484, R. 008489. This term was expressly designed to avoid the need for anyone to detect and trigger the removal: If the qualifying misconduct occurred, the administrator was stripped of his powers and his actions thereafter would be void.

B. Highland Files for Chapter 11 Bankruptcy

In 2019, Highland faced an unexpected judgment of approximately $100 million. R. 000659. To address that unanticipated financial challenge, Highland needed to convert illiquid assets into cash, pay the judgment, and resume operations. *Id.* The very lawyers that purport to represent Highland today—the Pachulski law firm from which this Court will hear in this appeal—told Mr. Dondero this could be accomplished by a short Chapter 11 bankruptcy reorganization process that would pause the judgment's enforceability pending an orderly process to sell that handful of assets. In October 2019 Highland sought reorganization under Chapter 11 in the United States Bankruptcy Court for the District of Delaware. *Id.*

Initially, that plan was working fine in Delaware, with a series of rulings poised to sell some assets and get Highland out of bankruptcy and back to work quickly. Then certain creditors with very tenuous claims sought disruption. They moved to transfer the proceedings to the Northern District of Texas, claiming that Judge Jernigan, having presided over a bankruptcy related to Mr. Dondero, was "intimately familiar with [Highland's] principals and complex organizational structure." *Dondero*, 2025 WL 1122466, at *1.

Current counsel for Highland disagreed, arguing that the "real reason" for seeking transfer to Judge Jernigan was that "she has formed negative views regarding certain members of the Debtor's management that the [creditors] hope will carry

over into this case." Dec. 2, 2019, Hr'g Tr., *In re Highland Capital Management, L.P.*, No. 19-12239-CSS (Bankr. D. Del. Dec. 3, 2019), Dkt. 181 at 77:18–78:8.

Following the transfer, the bankruptcy turned from a prompt and uneventful reorganization to a complete circus. It became a wholesale liquidation of Highland. During the *first* hearing in the Highland bankruptcy, Judge Jernigan insisted on Mr. Dondero's removal from Highland's management. R. 000659. The bankruptcy court effectively put a bankruptcy lifer—the so-called "Chief Restructuring Officer" James Seery—at the helm, and he attempted to paint a picture of a company that was insolvent. He began raining professional fees on lawyers and accountants and began a fire sale of Highland's assets. Together, this group collected fees worth hundreds of millions of dollars. R. 000660. As it turns out, Highland had enough assets to pay, and ultimately did pay, the inflated claims of all creditors, on top of hundreds of millions in fees.

C. Mark Patrick's Scheme to Plunder the Established Charities

Mark Patrick was a tax lawyer in Mr. Dondero's organization that assisted with the creation of the two charitable structures in question. After the caretakers of the Charitable DAF and Hunter Mountain structures retired in 2021 and 2022, Mark Patrick volunteered to fill those positions. R. 000662.

The first year or so progressed without incident. In 2023, however, Mr. Patrick embarked on a secret plan to steal the charitable assets of both structures and

pay himself tens of millions of dollars along the way. He asked a local law firm—the Shields Law Group—to come up with a plan for doing so, which was essentially a how-to guide for corporate fraud. *See* R. 008652–59.

Ultimately, he would use the Charitable DAF to steal both the approximately $270 million in assets held there and the equity stake in Highland held in the Hunter Mountain structure. To do so, he created an alphabet soup of nondescript entities, inserting them into the structure so they could serve as vehicles to steal the charitable assets through a sub rosa "corporate restructuring" without anyone noticing. This included DFW Charitable Foundation, a sham charity that Mr. Patrick created and ran from his basement, and CDH Ltd., the new general partner of the Charitable DAF. *See, e.g.*, R. 008660–64; R. 008665–67. Mr. Patrick wanted no one to notice these moves, so he instructed his lawyers to choose a "generic name" that was "hard to find or track, or trace." R. 010711.

Once his restructuring of the Charitable DAF was primed to be used as a vehicle to steal assets, Mr. Patrick "sold" Hunter Mountain and its equity stake in Highland into the charitable DAF structure for a nominal $1 million. R. 008816–24.

With Hunter Mountain now in the Charitable DAF, Mr. Patrick took final action to divorce the Highland equity asset and the more than $270 million in historical Charitable DAF assets from their established charitable owners. To do so, Mr. Patrick "redeemed" the established charities' ownership in the Charitable DAF for $1.6

million. To repeat, *Mr. Patrick cashed the charities out of their ownership of $270 million in assets and equity ownership in Highland worth potentially hundreds of millions more* for $1.6 million.

He attempted to paper it for when it got caught, seeking accounting firm after accounting firm to validate the legerdemain that somehow hundreds of millions were worth a little more than one. Legitimate firm after legitimate firm declined, until Mr. Patrick paid ValueScope to come up with an explanation. Dkt. 4655, May 11, 2026 Hr'g Tr. at 117:2–17, 123:6–125:23. This same firm—even before the Charitable DAF's acquisition of the Highland equity interest—reported a net asset value of approximately $270 million as of September 30, 2024. R. 009806. In March 2025, ValueScope did an about-face and opined that established charities' ownership interests were worth only $1.6 million. R. 008737. The next day, on March 27, 2025, Mr. Patrick redeemed the established charities' ownership for $1.6 million and then shut them out of the DAF structure. That move left DFW Charitable Foundation, his made-up charity, as the sole owner of well over $270 million in assets. R. 008809–11.

To keep the established charitable owners from sounding the alarm, Mr. Patrick kept all of them in the dark throughout. He did not tell them about the new, "hard to find or track, or trace" entities he created or the moves inserting them into the structure. He did not share the new ValueScope valuation, unlike the previous

ones sent to the charities telling them they had hundreds of millions in assets. R. 008680. Beyond nondisclosure, Mr. Patrick and others flat out lied to the charities to lull them into inaction while he completed his plundering restructuring. They falsely assured the charities that no structural changes were being made or would be made to the Charitable DAF and that audited financial statements that would show their assets, and new moves to benefit them, were coming. R. 011617–30, 013851–52, 013995, 014363–64.

Why was Mr. Patrick divorcing the established charities from their assets? An old explanation: Greed. Managing the assets should have been a part-time job, yet Mr. Patrick paid himself and his compatriot Paul Murphy more than $18 million from fourth quarter of 2024 to the second quarter of 2025. Dkt. 4655, May 11, 2026 Hr'g Tr. at 131:16–23.

D. His Theft Complete, Mr. Patrick Seeks to Settle with the Debtor

In early 2025, Mr. Patrick approached the court-appointed managers of Highland to forge a settlement purportedly on behalf of the Hunter Mountain equity position in Highland. The concept of such a settlement was an odd duck to begin with. Highland, having paid off its creditors, should have been returned to its owners at the end of a Chapter 11 restructuring. Not so here. The bankruptcy professionals, James Seery and his lawyers, were still running Highland. So, bizarrely, Highland

was in a position where it would "settle" with equity owners and somehow keep going.

Mr. Patrick, for his part, felt freed from having to act in the best interests of the established charity that had owned most of the Hunter Mountain equity stake in Highland or the donor who rightly expected the Hunter Mountain administrator to maximize value for the charity. So he sought to use the settlement for his own personal advantage. He made no significant demands for the bankruptcy professionals managing the Highland estate to turn over their hoard of cash. He agreed that he would absolve Highland's bankruptcy professional managers for a schedule of $25 million in cash payments, with only a $500,000 payment in the near term; a claim over the residual bankruptcy estate to which Hunter Mountain was already entitled; and transferring Highland's claims over its management against the donor who created Hunter Mountain—Mr. Dondero—to Hunter Mountain. R. 001280–88. This latter part is what Mr. Patrick really wanted. He knew his pillaging of the Charitable DAF would be discovered and that Mr. Dondero would do something about it. He wanted an offensive weapon to deter inquiry. Dkt. 4662, May 12, 2026 Hr'g Tr. at 80:25–81:7.

The settlement agreement was presented to Judge Stacey Jernigan of the bankruptcy court on May 19, 2025. Several parties, including Dugaboy, objected to the settlement.

During the truncated eleven-day discovery process prior to the June 25, 2025, hearing on the 9019 Settlement, Dugaboy received documents from Highland. Produced by Highland were documents that its management said "confirmed" that Mark Patrick possessed the authority to settle on Hunter Mountain's behalf—but they studied the old corporate structure of Hunter Mountain, not the one after Patrick's fraudulent restructuring. Dkt. 4671, May 21, 2026 Hr'g Tr. at 46:17–53:6. Dugaboy also deposed Mr. Patrick. During that deposition, Mr. Patrick feigned ignorance regarding who currently owned what. R. 016189.

Despite Dugaboy's objections to the proposed Rule 9019 Settlement, the bankruptcy court approved it.

E. Discovery of the Fraudulent Restructuring

In April 2025, when the charities were not getting answers about the financial state of the Charitable DAF, they asked the courts in the Cayman Islands—where key Charitable DAF entities were incorporated—to appoint a receiver over an important one of those entities. The Cayman court system did so, and that allowed the receiver, what the Cayman system calls the "joint official liquidators," to step into the shoes of that entity and access its documents. R. 001853; Dkt. 4655, May 11, 2026 Hr'g Tr. at 76:21–78:25.

On July 15, 2025, some twenty days after the settlement's approval, the Cayman liquidators filed a complaint with allegations detailing Mr. Patrick's fraudulent

restructuring activities. In the Cayman Islands, this is called a "Statement of Claim." *See* R. 001849–1931.

Two days later, on July 17, 2025, Dugaboy asked Judge Jernigan to stay the settlement approval in light of the allegations of fraud in the Statement of Claim. Four days later, Judge Jernigan denied it. R. 001422. In doing so, Judge Jernigan concluded, without further inquiry, that "[w]hatever the misdeeds may or may not be of Mark Patrick, they are not sufficiently intertwined with the Highland bankruptcy estate (or the Settlement Agreement) to justify a stay." R. 001420 (emphasis removed).

What followed between late July and December 2025 was the release of the hard evidence from the Cayman liquidation proceedings underpinning the receivers' allegations. This included Mr. Patrick's communications with coconspirators describing what they were up to, internal and formation documents, and the paper trail of filings proving each step of Mr. Patrick's scheme. The receivers were able to obtain the evidence only because they stepped into the shoes of the entity, as Cayman law maintains confidentiality of "private company information." Dkt. 4655, May 11, 2026, Hr'g Tr. at 76:21–77:23. The receivers also obtained access to otherwise privileged conversations between Mr. Patrick and his attorneys planning the fraudulent scheme. *See, e.g.,* R. 008652, R. 010711.

F. Judge Jernigan's Recusal

In December 2025, the Judicial Council of the Fifth Circuit resolved judicial misconduct complaints against Judge Jernigan arising from this matter through "corrective action." The corrective action spared Judge Jernigan the appointment of a special panel of the Judicial Council to impose formal discipline, and the resolution included her recusal from the Highland case going forward and special ethics training to prevent recurrence of the issues leading to the action. R. 001429. A principal basis for the corrective action was Judge Jernigan's writing of two novels, *He Watches All My Paths* and *Hedging Death*.[1] Therein, she expressed negative views about the hedge fund industry and, in the latter novel, pits a bankruptcy judge character, indistinguishable from herself, against a hedge fund manager bearing striking resemblance to Jim Dondero.

The novels were raised in a recusal motion, which was swiftly denied by Judge Jernigan in March 2023. R. 001492. Mr. Dondero sought review through a petition for mandamus, rather than waiting until the end of the case to press the issue. The Fifth Circuit observed that "a strong argument that [Judge Jernigan] had a duty to recuse," but denied mandamus relief because the right to relief was not "clear and indisputable." *Dondero*, 2025 WL 1122466 at *7.

[1] These are published books available to the public, full purchased copies of which were lodged with the bankruptcy court, are part of the record on appeal, and will be made available to this Court. R. 001827-8.

G. Dugaboy Asks the Court to Vacate the Settlement Approval Due to Patrick's Misconduct

In February 2026, Dugaboy asked Judge Jernigan's replacement—Judge Odell—to vacate the settlement approval. *See* R. 000642. Dugaboy moved for relief from the bankruptcy court's June 2025 approval of the Highland/Hunter Mountain settlement based on the incredible intervening evidence of Mark Patrick's vast fraud and the Fifth Circuit panel and Judicial Council developments regarding Judge Jenigan's recusal.

On April 1, 2026, after full briefing on the Rule 60(b) motion and the bankruptcy court's scheduling of an evidentiary hearing for May 2026, Highland moved for a protective order to prevent any discovery being taken prior to the hearing and related parties sought to quash Dugaboy's discovery efforts. *See* R. 003664; R. 005203. The bankruptcy court granted Highland's motion in part, protecting Highland and other parties from any obligation to produce documents or communications created prior to the May 2025 motion seeking approval of the settlement. *See* Dkt. 4566 at 2–5. The bankruptcy court held a three-day evidentiary hearing between May 11 and May 21, 2026.

On June 15, 2026, the bankruptcy court denied Dugaboy's Rule 60(b) motion to vacate. *See* R. 016459. With respect to the request for relief under Rule 60(b)(2), the Court ruled that the evidence presented at the May 2026 hearing was not "newly discovered" because Mr. Dondero had signed an affidavit before the Rule 9019

hearing in June 2025 detailing some lesser compliance lapses of Mark Patrick. R. 016468–69. The Court denied relief under Rule 60(b)(3) on the grounds that the provision requires fraud or misconduct to have occurred in the judicial proceeding itself, and that Highland itself had not lied. R. 016470–71. The Court denied relief under Rule 60(b)(6) by holding that Patrick's misconduct was not the debtor's misconduct, and the latter was the only thing that mattered. R. 016471–72. Further, the Court denied relief based on the predecessor judge's duty to have recused prior to approving the settlement, finding that Dugaboy had abandoned that argument despite Dugaboy having presented thorough and comprehensive argument on the topic in its briefing and pulled that across in oral argument. Dkt. 4671, May 21, 2026, Hr'g Tr. at 243:23–244:20.

STANDARD OF REVIEW

For the reasons stated in Section VI of the argument below, this Court should review all aspects of Judge Odell's ruling *de novo*, because the Constitution's Appointments Clause requires plenary supervision of an Article I judge by an officer listed in the Constitution, such as an Article III judge.

Before the Supreme Court's most recent Appointments Clause cases, when sitting in an appellate capacity, this Court reviews the bankruptcy court's findings of fact for clear error, its evidentiary decisions for an abuse of discretion, and its

conclusions of law de novo. *In re Age Refining, Inc.*, 801 F.3d 530, 539 (5th Cir. 2015); *In re SGSM Acquisition Co., LLC*, 439 F.3d 233, 238–39 (5th Cir. 2006).

"A bankruptcy court abuses its discretion when it applies an improper legal standard . . . or rests its decision on findings of fact that are clearly erroneous." *In re Crager*, 691 F.3d 671, 675 (5th Cir. 2012). A court applies an improper legal standard—and commits an abuse of discretion—when it erroneously concludes that its discretion is more constrained than the law provides. *In re Mendoza*, 111 F.3d 1264, 1266 (5th Cir. 1997). So too does it abuse its discretion when it applies an improper or faulty procedure to arrive at a decision. *See In re Sylvester*, 23 F.4th 543, 546 (5th Cir. 2022).

SUMMARY OF THE ARGUMENT

This Court should reverse the declination to vacate the Hunter Mountain / Highland settlement approval.

First, the bankruptcy court erred in holding that only misconduct by the debtor—and not by counterparties—is pertinent to approving a settlement under Federal Rule of Bankruptcy Procedure 9019.

Second, the bankruptcy court declined to apply heightened scrutiny to the deal struck by the court-appointed bankruptcy professionals it had placed in charge of the debtor Highland.

Third, the bankruptcy court erred in concluding that the evidence of Patrick's fraudulent restructuring and theft of the equity stake in Highland and more than $270 million in other assets from established charities was not "newly discovered" for purposes of Rule 60(b)(2). This evidence came from, and only could have come from, the Cayman proceedings and was released after the settlement approval. Mr. Dondero's April 2025 affidavit about other, lesser compliance lapses does not make this later evidence of far more serious misconduct anything other than "newly discovered."

Fourth, the bankruptcy court also erred in denying Dugaboy relief based on fraud under Rule 60(b)(3). The court further erred in disregarding Patrick's extrinsic fraud and both parties' intrinsic fraud during the discovery process leading to the June 2025 settlement approval.

Fifth, the bankruptcy court erred by not vacating the settlement approval because the prior judge should have already been recused from the case when she entered the relevant order.

Sixth, this Court should not defer to findings made in denying the Rule 60(b) motion and should instead review all of them *de novo*. Deferring to an Article I officer can no longer be reconciled with the Supreme Court's Appointments Clause jurisprudence.

Finally, the bankruptcy court erred by limiting discovery to events occurring after the May 2025 settlement approval motion and denying Mr. Dondero the opportunity to testify during Dugaboy's case in chief.

ARGUMENT

I. The Misconduct of a Settlement Counterparty, as a Category, Is Relevant to Whether the Settlement Should Be Approved under Bankruptcy Rule 9019

The bankruptcy court erred in holding that, as a category, the fraud or misconduct of a counterparty to a debtor settlement is not pertinent to whether it should be approved. That legal ruling was error. Circuit, district, and bankruptcy courts across the Nation have held that bankruptcy courts must evaluate whether a proposed debtor settlement is the product of fraud or collusion. That analysis is not just to ensure that the debtor is not engaged in fraud, but to make sure that all parties to a settlement are not asking a court of equity to sully itself in approving the transfer of property procured by misconduct or to facilitate a settlement that would advance misconduct. This responsibility—to detect and to turn away settlements affected by misconduct, including a counterparty's misconduct—is crucial to protecting the integrity of the courts.

The bankruptcy court determined that Mr. Patrick's misconduct, as "merely a signatory for a counter-party to a settlement agreement[,]" was not pertinent to settlement approval. R. 016469. As such, Mr. Patrick's fraud and misconduct was not

"sufficiently intertwined with the Highland bankruptcy estate (or the Settlement Agreement)" to become pertinent to whether the settlement should be approved. *Id.* Only the misconduct or fraud of the debtor matters, according to the bankruptcy court.

That holding is wrong as a matter of law. Bankruptcy courts, as courts of equity, have a duty to ensure that their proceedings are conducted fairly and free of fraud and misconduct. *U.S. v. Energy Res. Co., Inc.*, 495 U.S. 545, 549 (1990); *see In re Thomas*, 337 B.R. 879, 888 (Bankr. S.D. Tex. 2006); *In re CWNevada LLC*, 602 B.R. 717, 737 n.44 (Bankr. D. Nev. 2019) (bankruptcy court's role in rooting out fraud by litigants "is designed to preserve public confidence in, as well as the integrity of the court, by preventing it from becoming a participant in inequitable conduct") (citing *Precision Instrument Mfg. Co. v. Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814–15 (1945)). This duty encompasses fraud and misconduct affecting *any* part of the proceedings. *E.g.*, *In re Vega*, 102 B.R. 552 (Bankr. N.D. Tex. 1989) (removing Chapter 7 trustee for misleading and misrepresentative fund management); *In re Yazoo Pipeline Co., L.P.*, 459 B.R. 636, 648 (Bankr. S.D. Tex. 2011) (permitting post-petition fraud claims against third parties for injuries on behalf of the estate). Bankruptcy courts do not, and should not, approve settlements when one of the parties to the settlement arrives at the court through fraud, collusion,

or bad faith. *In re Age Refining, Inc.*, 801 F.3d 530, 540 (5th Cir. 2015); *see also In re Foster Mortg. Corp.*, 68 F.3d 914, 918 (5th Cir. 1995).

Fulfilling this duty is particularly critical when evidence of fraud and misconduct is brought directly to the attention of the bankruptcy court. *See Pepper v. Litton*, 308 U.S. 295, 310-12 (1939) (when fraud is shown, "the necessity of equitable relief against that fraud becomes insistent"). A bankruptcy court must "exercise [] its equity jurisdiction to undo" fraudulent schemes brought by parties with unclean hands. *Id.* at 312. And this duty to prevent fraud does not stop at the debtor's fraud, and extends to non-debtors as well. *See, e.g.*, *Northbay Wellness Grp., Inc. v. Beyries*, 789 F.3d 956 (9th Cir. 2015); *Matter of Garfinkle*, 672 F.2d 1340 (11th Cir. 1982); *In re New Valley Corp.*, 181 F.3d 517 (3d Cir. 1999). This consideration of all parties' conduct furthers the bankruptcy court's "need to render just decisions on the basis of all the operable facts." *Edward H. Bohlin Co., Inc. v. Banning Co., Inc.*, 6 F.3d 350, 355 (5th Cir. 1993). Otherwise, the court risks the "legitimacy and integrity of the bankruptcy process." *In re Kallstrom*, 298 B.R. 753, 758–59 (10th Cir. BAP 2003). The Fifth Circuit's standard turns on whether the settlement was the ***product*** of fraud or collusion—and not on the identity of the wrongdoer. *See In re Age Refining, Inc.*, 801 F.3d 530, 540 (5th Cir. 2015); *In re Foster Mortg. Corp.*, 68 F.3d 914, 918 (5th Cir. 1995).

Here, the bankruptcy court's ruling that Mr. Patrick's scheme was on the sidelines of the settlement approval inquiry risked the court's legitimacy and integrity being tainted by misconduct. The bankruptcy court never questioned that Mr. Patrick's actions were misconduct and fraud, even serious misconduct and fraud. R. 016469. Based on the evidence presented to the bankruptcy court, Mr. Patrick, without lawful authority, was dealing away stolen assets in his settlement with Highland. The purpose of the 9019 Settlement was clear: to secure millions of dollars of additional compensation funneled through a structure which leads only to Mr. Patrick's sham charity and himself, and to exchange the valuable claims of Hunter Mountain against Highland for the *Kirschner* claims, which Mr. Patrick could use as a cudgel against Mr. Dondero and other parties seeking to hold him accountable for what he had done.

The ruling was also wrong based on the particular circumstances of this case. Indeed, Mr. Patrick's misconduct—which involved gross abuse of his fiduciary duties to the charitable beneficiaries of Hunter Mountain—divested him of the authority to enter into the settlement on behalf of that entity. R. 008484–89. The Hunter Mountain Investment Trust Agreement automatically stripped its administrator of

authority if he committed various forms of misconduct, including breaches of fiduciary duty, in any capacity. *Id*.[2]

II. The Bankruptcy Court Erred in Deferring to a Settlement that Was Not Negotiated by the Equity Owners of the Debtor

The bankruptcy court held that it did not have a significant role in approving a settlement and that its default should be to permit debtors and counterparties to make deals that are in their own interest. R. 016472.

That was error, in the circumstances of this case. Here, the settlement was not negotiated by the owners of the debtor—a so-called debtor in possession, seeking to maximize the value of remaining equity—with some historical adversary. Instead, the court-appointed bankruptcy professionals controlling the Highland estate are akin to trustees, acting as an arm of the court, and here they purported to negotiate a resolution with the equity holders. In such circumstances, the court had a special responsibility to ensure that its effectively appointed managers did not get involved in a counterparty's misconduct in the name of the court.

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[2] The bankruptcy court also declined to vacate because he lacked the authority to completely undo Mr. Patrick's theft of assets, in the form of his corporate restructuring of the Charitable DAF. R. 016471. The bankruptcy court was correct that he cannot unwind Mark Patrick's fraud—that is for other courts considering the issue. But the observation misses the gravamen of the objection to the settlement. As a court of equity, the bankruptcy court should not have rewarded or advanced Mr. Patrick's misconduct by approving a settlement he was not authorized to reach, and which serves both to pay him and protect his fraud.

Debtors-in-possession and trustees are each bound by their fiduciary duties to "act in the best interest of the estate." *See In re Performance Nutrition, Inc.*, 239 B.R. 93, 111-12 (Bankr. N.D. Tex. 1999) (highlighting the identical duties of a trustee and a debtor-in-possession). These fiduciary obligations to creditors provide a baseline assurance of fairness, which is in turn ensured by the Court's surveillance of the trustee or debtor-in-possession's actions. *See id.*; *In re CNC Payroll, Inc.*, 491 B.R. 454, 460 (Bankr. S.D. Tex. 2013) ("The Court must assure both the integrity of [trustees], and their ability to operate independently."). Equity owners as debtors in possession also can be counted on to act in the interest of equity.

These controls are not in place for what happened here, where court-appointed non-trustee bankruptcy professionals take control of a debtor. *In re Southmark Corp.*, 163 F.3d 925, 931 (5th Cir. 1999) (acknowledging that "standards for the conduct of court-appointed professionals . . . are not comprehensively expressed in the statute."). Professionals and committees selected by creditors pose a particular conflict, because they do not owe a fiduciary duty to maximize the estate. In fact, their duty is not to the estate at all—it is solely to the creditors that elect them. *See Louisiana World Exposition v. Fed. Ins. Co.*, 858 F.2d 233 (5th Cir. 1988) (recognizing the differing interests between a fiduciary trustee and a creditors' committee); *In re Mirant Corp.*, 354 B.R. 113, 143 n.80 (Bankr. N.D. Tex. 2006) (stating that "the

interests of [a committee's] constituents, to which it owes its primary duties, may not always be perfectly congruent with what is best for the estate.").

Here, the so-called chief restructuring officer, James Seery, was appointed by a hostile creditor committee that did *not* have the estate's best interest in mind. Mr. Seery, unlike a debtor-in-possession or a trustee, did not have an interest in preserving Highland as a going concern. Indeed, all claimants have already received their compensation, and yet, Highland's equity continued to dwindle in the hands of unchecked bankruptcy professionals.

When it is clear that a party in control is not bound by the traditional guardrails of fiduciary responsibilities, the bankruptcy court has a duty to scrutinize and not merely to defer to a settlement proposed by that party. The necessity of this duty is plain in this bizarre case. Career bankruptcy professionals, having overseen payment to all creditors yet strangely still in charge of the Chapter 11 debtor, are negotiating with a Highland equity holder. In any debtor-in-possession bankruptcy, Highland would have been returned to the control of the equity holders already. Perhaps this is a flaw in the plan of reorganization, which was based on Seery's depiction of Highland as insolvent and kept him and his cadre of bankruptcy professionals in charge following payment of all creditors. Regardless, this odd duck of a settlement is sufficient reason the bankruptcy court should not defer to negotiations between bankruptcy professionals that should not be there and an equity holder lacking

authority to settle because he stole the assets he is dealing. The bankruptcy court's failure to recognize its duty to scrutinize a settlement negotiated by two parties that should not control the assets they are trading in the first place is error and requires correction.

III. The Evidence of Mr. Patrick's Massive Theft of Charitable Assets Was Newly Discovered for Purposes of Rule 60(b)(2)

A. The New Evidence Could Not Have Been Discovered Through Due Diligence without the Special Powers of Cayman Liquidators to Obtain Confidential Documents

Mr. Patrick's massive theft of charitable assets was "newly discovered evidence" under Federal Rule of Civil Procedure 60(b)(2), and the bankruptcy court erred in holding to the contrary. Vacatur is warranted where evidence, despite its existence at the time of trial, "could not through due diligence have been discovered" before the deadline to move for a new trial under Rule 59(b), as modified by Fed. R. Bankr. P. 9023, and "would have clearly produced a different result if presented to the court before" the order. *Harrison v. Byrd*, 765 F.2d 501, 503 (5th Cir. 1985); *Gov't Fin. Servs. One Ltd. P'ship v. Peyton Place, Inc.*, 62 F.3d 767, 771 (5th Cir. 1995). Evidence qualifies as "newly discovered" so long as the underlying facts existed at the time of judgment, even if the documents revealing those facts were not available until afterward. *Chilson v. Metro. Transit Auth.*, 796 F.2d 69, 70–72 (5th Cir. 1986).

Here, the newly discovered evidence presented to the bankruptcy court revealed that Mr. Patrick did not present the Hunter Mountain settlement proposal to the court in good faith or without collusion or fraud. Specifically, that evidence showed that Mr. Patrick had secretly restructured two charitable entities to steal the equity stake in Highland he was purporting to represent in the settlement and $270 million in other assets from established charities. And because Dugaboy could not have uncovered the new evidence with due diligence before the Cayman Liquidators revealed it, that evidence is "newly discovered evidence" warranting relief under Rule 60(b)(2).

Mr. Patrick formulated a work plan to remove valuable assets from the Charitable DAF structure, (R. 008652–008659); created entities in March 2024 designed to be "hard to find or track, or trace" with "[g]eneric name[s]" and "[s]trong litigation protection," (R. 010711); formed "DFW Charitable Foundation," headquartered in his basement (R. 013339–013404); sold the Highland equity stake into the Charitable DAF structure for $1 million in a February 2025 transaction for the purpose of using the Charitable DAF restructuring to steal it from all the charities two months later (R. 006142–006150); shopped for low-ball valuations and, after two reputable firms declined, engaged ValueScope to value approximately $270 million in assets at just $1.6 million (R. 002654–002664, R. 011034–011050, R. 016136–016139); and used this valuation to thieve the original charitable beneficiaries' interests for

pennies on the dollar, leaving his sham charity as the sole beneficiary of over $270 million (R. 010011–010015).

Evidence of this fraud was unavailable to Dugaboy, despite due diligence, until well after the new trial deadline. Under Fed. R. Civ. P. 59(b), as modified by Fed. R. Bankr. P. 9023, Dugaboy had until July 14, 2025—14 days from the June 30, 2025, order—to seek a new trial.

Mr. Patrick's fraud was executed secretly, without disclosure to Mr. Dondero as the donor or the affected charities as the owners of his generous gift. By design, the entities he created were "hard to find or track, or trace." R. 010711. When Mr. Dondero and the charitable organizations requested transparency, they received false assurances that the structure would not change and that transparency was forthcoming to lull them out of further inquiry. R. 011617–011630.

On July 15, 2025, the Cayman Liquidators filed a complaint in the Cayman Islands alleging this misconduct. The allegations were followed by evidence, which remained inaccessible due to Cayman Islands privacy protections until the Cayman Liquidators released it during court proceedings. Dkt. 4655, May 11, 2026, Hr'g Tr. at 76:21–77:23. Some was released later in July, the rest at a December 2025 injunction hearing in the Cayman Islands. Dugaboy promptly filed its Rule 60(b) motion in early February 2026.

Critically, generalized warnings and allegations do not constitute evidence "material and controlling" that "clearly would have produced a different result." *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 639 (5th Cir. 2005); *cf. Gov't Fin. Servs. One Ltd. P'ship*, 62 F.3d at 771. Until the evidence underlying the Cayman Liquidators' allegations was revealed, Dugaboy lacked a sufficient basis to seek vacatur.

B. The Bankruptcy Court Erred by Determining that an April 2025 Affidavit Documenting Mr. Patrick's History of Lesser Compliance Issues Rendered Evidence of his Massive Theft of Charitable Assets Not Newly Discovered Evidence

The bankruptcy court erred in determining that an April 2025 affidavit executed by Dondero rendered the evidence of massive theft and fraud revealed in the Cayman proceedings not new evidence. Where known misconduct is confined to a different entity or type of wrongdoing, that knowledge does not constitute notice of a qualitatively different, deliberately concealed fraud. *Town North Bank N.A. v. Shay Fin. Servs., Inc.*, No. 3:11-CV-3125-L, 2014 WL 4851558, at *21 (N.D. Tex. Sept. 30, 2014); *Kitchell v. Aspen Exploration, Inc.*, 562 F. Supp. 2d 843, 849–50 (E.D. Tex. 2007); *In re Enron Corp.*, 2005 WL 1637912, at *4 (S.D. Tex. 2005) (no inquiry notice where known misconduct was "far afield" from the alleged scheme); *cf. Sudo Props., Inc. v. Terrebonne Parish Consol. Gov't*, 503 F.3d 371, 374-75 (5th Cir. 2007).

The bankruptcy court's finding conflates two fundamentally different categories: (1) discrete compliance concerns within the DAF structure and (2) evidence

that Mr. Patrick had secretly restructured $270 million in charitable assets into entities he controlled. R. 006062 (Dondero Affidavit).

A close reading of the Dondero affidavit reveals the gap between what it contained and what the bankruptcy court attributed to it. The affidavit identified five discrete, lesser compliance matters, none of which revealed the massive theft the Cayman Liquidators later uncovered:

- *Creative HEARTS TX grant*: Mr. Patrick directed a $10,000 donation to a nonprofit formed by his wife and daughter without disclosing the family relationship; Mr. Dondero had asked Mr. Patrick to address this compliance issue months earlier. R. 006066 ¶¶ 25–26.

- *Fortaris fee-split proposal*: A former FBI agent reported that Mr. Patrick proposed a $50,000/month payment if the agent would share half with Mr. Patrick; Mr. Dondero resolved this issue internally months earlier. R. 006067 ¶¶ 27–30.

- *Skyview confidentiality concern*: A concern that Mr. Patrick violated the internal compliance policies of Skyview—an entity that provides services to Dondero-related and other entities—by disclosing confidential investment information; this was under investigation when Mr. Patrick resigned from Skyview in October 2024. R. 006068-69 ¶¶ 33–36.

- *Increased expenses*: Mr. Dondero expressed concerns about increased Charitable DAF Fund expenses in 2023 and the first two quarters of 2024, but he only knew the overall level of spending and not how it was being spent. R. 006068 ¶ 31.

- *Sale of Hunter Mountain*: The affidavit stated that Hunter Mountain had been sold for $1 million, but Mr. Dondero could not identify the purchaser or the purpose of the transaction. R. 006069-70 ¶¶ 38–39.

Increased expenses do not put anyone on notice of deliberate misconduct. *See Sudo*, 503 F.3d at 374–77. While the Affidavit showed somewhat increased directors' compensation in the first two quarters of 2024, the Cayman Liquidators later discovered Mr. Patrick had paid himself more than $14 million in the latter half of 2024 and following. R. 013214–013215 (First MacInnis Affidavit) ¶¶ 49–51; *see also* Cayman Judgment (Feb. 10, 2026) ¶ 205 (Cayman Liquidators discovered Mr. Patrick received $10,548,778 in director's fees in 2024 and $3,325,000 in the first six months of 2025). He then stole $270 million from the established charities and transferred it to a sham charity run from his basement.

The contrast between the affidavit and the later-discovered fraud is one of kind, not just degree. *See Enron*, 2005 WL 1637912, at *4. The affidavit described isolated instances of deviations from corporate policies and less than ideal management; the later-discovered conduct was a transactional scheme to steal an eight-figure charitable portfolio, executed across multiple jurisdictions and deliberately hidden behind "[g]eneric name[s]" for "[s]trong litigation protection." R. 010711. An unconsummated fee-split does not predict the secret replacement of a general partner. Knowledge that directors' fees were rising does not reveal that the person raising them was engineering the elimination of every charitable beneficiary's economic interest.

The bankruptcy court appeared to suggest that Mr. Dondero's failure to take action to remove Mr. Patrick for the comparatively minor compliance issues somehow barred him from arguing, when the later evidence of the $270 million fraud was discovered, that he was removed from his role as administrator of the Hunter Mountain Investment Trust. After all, the Hunter Mountain Investment Trust Agreement contained a term automatically removing the administrator of Hunter Mountain if he engaged in various forms of misconduct or a breach of fiduciary duty in any capacity. R. 008489.

First, no failure to invoke contractual remedies over less serious violations, however, can waive the ability to act when grave misconduct is later discovered. *See, e.g., Rhodes v. Amarillo Hosp. Dist.*, 654 F.2d 1148, 1152 (5th Cir. 1981) (prior forbearance in seeking remedies does not waive subsequent breach); *Balfour Beatty Rail, Inc. v. Kan. City S. R.R. C*o., 173 F. Supp. 3d 363, 406–07 (N.D. Tex. 2016) (continued contractual performance does not operate to waive prior breach); *In re Endeavour Highrise, L.P.*, 432 B.R. 583, 655–56 (Bankr. S.D. Tex. 2010) (neither continued performance nor efforts to induce performance following a breach constitute waiver); *Watts v. Fritz*, 194 N.E.2d 276, 279 (Ill. 1963); *Kneale v. Bonds*, 452 S.E.2d 840 (S.C. Ct. App. 1994) (waiver of objection to a minor violation does not waive right to object to subsequent and more substantial violations); *Myers v. Armstrong*, 324 P.3d 388, 392 (N.M. App. 2014) (failure to enforce against minor and

trivial violations does not constitute acquiescence); *Ginsberg v. Yeshiva of Far Rockaway*, 325 N.E.2d 876 (N.Y. App. 1975) (plaintiffs' failure to object to what they deemed inoffensive violations did not forfeit rights to enforce covenant to prevent violations they deemed offensive); *Philadelphia Fresh Food Terminal Corp. v. M. Levin & Co. et al.*, 361 A.2d 886 (Pa. 1976) (same). And indeed the affidavit itself reveals that Mr. Dondero addressed many of these problems by raising them with Mr. Patrick through his Skyview employment and obtaining assurances they would not recur. R. 008046–008047 (Dondero Affidavit) ¶¶ 27–30.

Nor would discovery prior to the 9019 hearing have helped. At the June 25, 2025, settlement hearing, Dugaboy knew only what the Dondero affidavit disclosed: isolated compliance concerns. Dugaboy did not know, and could not have known, that Mr. Patrick secretly restructured the Hunter Mountain Debtor equity asset and $270 million in other assets in order to steal them.

The Cayman Liquidators were able to unpack Mr. Patrick's fraud only by stepping into the shoes of the Cayman entity and obtaining access to otherwise confidential corporate restructuring documents from that company's lawyers and advisers. Dkt. 4655, May 11 Hr'g Tr. at 76:21 - 77:19. Dugaboy had no such access.

IV. The Bankruptcy Court Erred in Denying Relief under Rule 60(b)(3) Because Mr. Patrick's Fraud Qualifies Thereunder and Highland and Mark Patrick Withheld Evidence of Mr. Patrick's Discovery Misconduct

Rule 60(b)(3) allows relief from an order due to "fraud (whether intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(3). Such relief is warranted when "the opposing party withheld information called for by discovery or willfully committed perjury." *Gen. Universal Sys., Inc. v. Lee*, 379 F.3d 131, 156–57 (5th Cir. 2004). The rule is remedial and should be liberally construed to vacate judgments unfairly obtained. *Hesling v. CSX Transp., Inc.*, 396 F.3d 632, 641 (5th Cir. 2005).

At the 60(b) hearing, Dugaboy presented evidence of misconduct by both Mr. Patrick and Highland during the highly restricted discovery process preceding the 9019 settlement hearing. The bankruptcy court erred first by presuming that only fraudulent misconduct by a debtor is relevant under Rule 60(b)(3), thus adopting the incorrect view that only "intrinsic" fraud within the judicial process itself counts. R. 016469. As a result, the court looked only for potential misconduct by Highland while ignoring more serious fraudulent conduct by Mr. Patrick, including in connection with the settlement. R. 016471.

A. The Bankruptcy Court Erred in Not Considering Overwhelming Evidence of Mr. Patrick's Extrinsic Fraud Against the Charities

By its own terms. Rule 60(b) not only covers "intrinsic" fraud (i.e., misconduct connected to the judicial process), but also extends to "extrinsic" fraud committed away from the courthouse, to the extent that fraud corrupts or taints a court order. In erroneously limiting itself to a narrow focus on fraud in court (R. 016469),

the bankruptcy court missed the much larger underlying fraud against the charities that made possible and culminated in a corrupt bargain between Highland and the man who used Hunter Mountain and a stack of other entities to conceal his theft of $270 million in value from the charitable entities. The overwhelming preponderance of that fraud took place far from the courtroom and months in advance of the settlement. But the June 2025 settlement was nevertheless the product of that fraud, and therefore it must be vacated under Rule 60(b)(3). The bankruptcy court's failure to even consider this entire category of fraud was a legal error contrary to the plain language of Rule 60(b)(3), and its order should be reversed on that ground alone.

B. Mark Patrick Was an "Opposing Party" in the Settlement Proceedings, and His Deceptive Conduct Warranted Relief Under Rule 60(b)(3).

Separate from Mr. Patrick's theft of over $270 million in charitable assets, his omissions, obfuscations, and misrepresentations during discovery and the settlement hearing independently warrant relief under Rule 60(b)(3). As Hunter Mountain's administrator, Mr. Patrick was a "party" to the 9019 settlement, and because his position was adverse to Dugaboy's, he was an "opposing party" for purposes of Rule 60(b)(3). *See, e.g.*, *Rismed Oncology Sys., Inc. v. Baron*, 297 F.R.D. 637, 656 (N.D. Ala. 2014).

Mr. Patrick repeatedly testified at his deposition that he could not remember who owned a key entity in his efforts to pull off the theft of charitable assets.

Highland Hr'g Ex. 58 (June 23, 2025, Patrick Dep. Tr.) at 7:22–8:6 (App. 068). He also claimed he did not remember whether he had changed the general partner of the Charitable DAF structure. Ex. 58 (Patrick Dep. Tr.) at 7:5–9 (App. 068); 13:6–18 (App. 070). His deposition was in June 2025; he had just orchestrated the fraudulent restructuring in March 2025; his asserted lack of recollection were deliberate lies meant to obstruct the proceedings.

Mr. Patrick also lied about Hunter Mountain's ultimate owner, stating it was Beacon Mountain, LLC, when in fact several other owners existed above Beacon Mountain in the ownership chain—including entities he used in the fraudulent restructuring. Highland Hr'g Ex. 58 (Patrick Dep. Tr.) at 11:10–19 (App. 069). This misleading testimony concealed that Mr. Patrick had sold Hunter Mountain to CLO HoldCo, LLC on February 12, 2025.

C. Highland's Discovery Misconduct Prior to the Settlement Approval Warrants Relief Under Rule 60(b)(3).

At the Rule 60(b) hearing, Dugaboy demonstrated that Highland—unquestionably an opposing party—worked to obstruct discovery into the settlement negotiations, during which Highland failed to exercise due diligence in assessing Mr. Patrick's authority to act on behalf of Hunter Mountain, and may have concealed information showing he lacked that authority.

When asked to produce documents pertinent to Mr. Patrick's authority, Highland produced documents addressing only the *historical* Hunter Mountain structure,

giving the false impression that assets continued to be held for the benefit of the original charitable owner, The Dallas Foundation. *Id*. at 52:7–11 (App. 124). Yet Hunter Mountain had already been sold into the Charitable DAF structure on February 12, 2025—before the settlement was finalized.

Mr. Seery testified he reviewed only the historical organizational documents identified in Highland's June 24, 2025, exhibit list. Cross-Examination of James Seery, May 21, 2026, Hr'g Tr. at 47:14–24 (App. 119). This was an explicit suggestion that Hunter Mountain remained in the same structure it had been prior to Mr. Patrick's fraudulent restructuring. Both Highland and Mr. Patrick reinforced this by conceiving a settlement agreement with signatories for the Hunter Mountain side from a stack of parent companies from before Mr. Patrick's monkey business. Dkt. 4277 at 8–11; Dkt. 4662, May 12, 2026 Hr'g Tr. at 73:19–74:7; Dkt. 4671, May 21, 2026 Hr'g Tr. at 46:17–53:6. Neither Highland nor Mr. Patrick placed on the settlement agreement of the companies in the current stack of ownership of Hunter Mountain, lest they alert anyone to the massive restructuring that had occurred. Dkt. 4662, May 12, 2026 Hr'g Tr. at 70:9–71:12; Dkt. 4671, May 21, 2026 Hr'g Tr. at 52:7–21.

V. The Bankruptcy Court Erred in Finding That Dugaboy Abandoned Its Argument That the Predecessor Judge Lacked Authority to Enter the 9019 Settlement

The bankruptcy court's refusal to consider Dugaboy's argument that Judge Jernigan lacked authority to enter the 9019 Settlement was error because the court

(1) incorrectly found that Dugaboy had abandoned the argument, and (2) failed to recognize a judge's continuing duty to avoid even the appearance of partiality.

A. The Bankruptcy Court Erroneously Applied Abandonment to Dugaboy's Fully Briefed Argument

Forfeiture occurs when a party fails to raise an argument or adequately brief it. *Rollins v. Home Depot USA, Inc.,* 8 F.4th 393, 397 (5th Cir. 2021). A party "does not forfeit an argument when it 'fairly appears in the record as having been raised or decided.'" *Shahrashoob v. Texas A&M Univ.*, 125 F.4th 641, 649 (5th Cir. 2025) (quoting *Shambaugh & Son, L.P. v. Steadfast Ins. Co.*, 91 F.4th 364, 370 (5th Cir. 2024)). To avoid forfeiture, the argument must have been "raised to such a degree that the district court has an opportunity to rule on it." *FDIC v. Mijalis*, 15 F.3d 1314, 1327 (5th Cir. 1994).

The bankruptcy court decided not to rule on the recusal argument because evidence about it, beyond the extensive briefing, was not introduced at the hearing to determine whether there was "newly discovered evidence" to warrant vacating the settlement. R. 016463 n.6. But Dugaboy's argument that the settlement should be vacated for the judge's failure to recuse was not based on "newly discovered evidence." It was based on her error in failing to recuse in the first place, and the Fifth Circuit's determination that there was a "strong argument" she "had a duty to recuse," the vindication of which was awaiting final appealable order. *Dondero*, 2025 WL 1122466, at *7. So strong was that conclusion that the Fifth Circuit

Judicial Council intervened and effected Judge Jernigan's recusal going forward, appropriately leaving the District and Circuit courts sitting on merits appeals of final orders to determine the retrospective effect on Judge Jernigan's previous rulings. R. 001424–30.

Judge Jernigan approved the settlement in question *after* she erred by declining to recuse due to her novel writing regarding Mr. Dondero. That error was not clear enough for the Fifth Circuit to intervene in a mandamus setting, but is strong enough for this Court to reverse the final order declining to vacate the settlement approval. To that end, the recusal argument was fully briefed in the Rule 60(b) motion papers and therefore fully presented to the new bankruptcy judge—and to the appellate courts reviewing the Rule 60 final order—for correction.

The bankruptcy court's late call for evidence to be presented on this historical point is odd. Certainly, the bankruptcy court would not have permitted calling Judge Jernigan in for testimony. In any event, Dugaboy offered Mr. Dondero as a witness in its case-in-chief—which the bankruptcy court did not allow—and lodged the novels underlying the judicial-misconduct complaints that resulted in the "corrective action" that precipitated Judge Jernigan's recusal. *See* R. 000692–99, R. 005973–81; *see also* Dkt. 4513-56. There is not and could not possibly be any dispute of the authenticity of the novels, which are published works that do not require an

evidentiary hearing for the Court to consider. *United States v. Berrojo*, 628 F.2d 368, 369 (5th Cir. 1980); *see also* Fed. R. Evid. 201.

Dugaboy's briefing on the recusal issue was the right medium for raising the issue and sufficient to require a substantive ruling on it. *See Arredondo v. Elwood Staffing Servs., Inc.*, 81 F.4th 419, 429 (5th Cir. 2023) (argument not abandoned if the "court had the law and facts before it to sufficiently" evaluate the claim). Therein, Dugaboy "responded" to Highland's arguments to the contrary. *Purl v. U.S. Dep't of Health & Hum. Servs.*, 787 F. Supp. 3d 284, 301 (N.D. Tex. 2025) (no waiver when contrary arguments responded to); *see also* R. 005973–81; R. 000692–99, Dkt. 4671, May 21, 2026, Hr'g Tr. at 243:23–244:10 (incorporating at the evidentiary hearing the briefing and record citations at argument).

Finally, the cases cited by the bankruptcy court do not support its ruling. The court cited *Kovac v. Wray*, 363 F. Supp. 3d 721 (N.D. Tex. 2019), and *Keenan v. Tejeda*, 290 F.3d 252 (5th Cir. 2002), for the proposition that failure to pursue a claim beyond the initial complaint renders it abandoned. R. 016463 n.6. But those cases involved litigants who failed to respond to the opposition. In *Kovac*, the plaintiffs did not respond to a motion to dismiss as to some claims, and the court dismissed those claims. 363 F. Supp. 3d at 747–48. In *Keenan*, plaintiffs waived issues raised in their pleadings but not addressed in summary judgment briefing. 290 F.3d at 262.

Here, Dugaboy provided 17 pages of argument and lodged the books themselves—the opposite of abandonment.

B. The Seriousness of the Predecessor Judge's Conduct Demands Review of Her Prior Orders, Including Approval of the 9019 Settlement.

This Court should vacate the settlement approval due to Judge Jernigan's error in declining to recuse from the case prior to that approval. Her book writing would lead a reasonable person to question her impartiality, and continuing to preside over the case—after parties had challenged her neutrality based on those books and she had declined to recuse—left the case without the appearance of impartiality that § 455(a) requires. That refusal implicates the public's perception of judicial impartiality. Section 455(a) of Title 28 provides that a judge "shall disqualify" herself "in any proceedings in which [her] impartiality might reasonably be questioned." 28 U.S.C. § 455(a). By the June 25, 2025, hearing on the 9019 Settlement, Dugaboy and Mr. Dondero already had sought her recusal and the Fifth Circuit had observed there was "a strong argument" she "had a duty to recuse" due to her novel writing. *See Dondero*, 2025 WL 1122466, at *7. And months later, the Judicial Council for the Fifth Circuit concluded that Judge Jernigan's recusal, together with other remedial measures, constituted "appropriate corrective action." R. 001430.

When there are known circumstances giving rise to reasonable questions about impartiality, recusal is required, 28 U.S.C. § 455(a), and orders entered

thereafter may be void. *Tramonte v. Chrysler Corp.*, 136 F.3d 1025, 1028 (5th Cir. 1998). This rule reflects the principle that "to perform its high function in the best way[,] 'justice must satisfy the appearance of justice.'" *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 864 (1988). Here, Mr. Dondero raised reasonable questions about Judge Jernigan's impartiality—including parallels between her novels and the litigants before her—as early as 2023. Judge Jernigan nevertheless declined to recuse and continued presiding over the Highland bankruptcy. Because recusal was required once the asserted grounds for mandatory recusal existed and were presented to her, Judge Jernigan lacked authority to approve the 9019 Settlement in June 2025.

The facts are unprecedented: Judge Jernigan wrote and published two novels while overseeing the Acis Capital Management and Highland Capital Management bankruptcies, entities owned by and closely associated with Mr. Dondero. She chose to publish legal thrillers featuring a bankruptcy judge in the Northern District of Texas patterned after herself. R. 000695. The protagonist faces off against negatively portrayed hedge funds and a villainous hedge fund manager named Cade Graham. *Id.*; R. 001446. Graham shares many similarities with Mr. Dondero: similar stature, age, and professional experience. R. 001446. Graham's fund, "Ranger Capital," was Highland's former name before rebranding—a fact well known to Judge Jernigan

from both bankruptcies. R. 001467; *see* R. 000695 n.25. The fictional Ranger Capital even shares Highland's unique asset mix. *Id.* at 46–47.

The bankruptcy court's refusal to engage Dugaboy's argument demands reversal to maintain public confidence in the judiciary. Allowing the challenged orders to stand despite reasonable questions about the predecessor judge's impartiality in approving the settlement risks the "substantial and widespread lowering of public confidence in the courts" addressed by Judicial-Conduct and Judicial-Disability Rule 4(a)(7); *see also Demodulation, Inc. v. United States*, 114 Fed. Cl. 655, 657 (2014) ("[I]f the orders of the now-recused judge were allowed to stand, Plaintiff could one day wonder whether the outcome of the case was influenced by a judge who later recused herself from the case").

VI. The Court Should Review de Novo the Rulings or Findings of Fact of an Article I Bankruptcy Judge

The Supreme Court long ago held that bankruptcy courts lack the plenary judicial power granted to federal courts by Article III of the Constitution. *See Northern Pipeline Constr. Co. v. Marathon Pipe Line Co*., 458 U.S. 50 (1982); *Stern v. Marshall*, 564 U.S. 462 (2011). This is because, among other things, bankruptcy judges lack the traditional protections afforded to Article III judges—life tenure and undiminishable salaries—that are essential to protecting our system of checks and balances. *See Stern*, 564 U.S. at 483–484. And they are not listed as principal officers of the United States or contemplated as judges in the Constitution. Bankruptcy

courts may, however, exercise full judicial power in a limited subset of "core" proceedings involving "a substantive right provided by Title 11 or [in] a proceeding that, by its nature, could arise only in the context of the bankruptcy case." *In re Wood*, 825 F.2d 90, 97 (5th Cir. 1987). Crucial to this structure is that bankruptcy courts essentially function as an adjunct of the district courts, subject to district court review and control. *See In re Clay*, 35 F.3d 190, 193–94 (5th Cir. 1994).

But even in "core" proceedings, bankruptcy courts' powers are circumscribed by the Constitution. They may not enter final judgements unless "the action at issue stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process," regardless of whether the proceeding is "core" under statute. *Stern v. Marshall*, 564 U.S. 462, 499 (2011). In other words, Article III requires a district court to exercise *de novo* review of *all* factual and legal issues that bankruptcy courts resolve in private-rights disputes—regardless of whether the proceeding qualifies as a "core" or "non-core" proceeding under 28 U.S.C. § 157.

The validity of the statutory distinction between "core" and "non-core" proceedings, however, is even more untenable in a world after *Trump v. Slaughter*, 609 U.S. 422 (2026). *Slaughter* repudiates the idea that the decisions of subordinate officials are insulated from plenary review and control by constitutionally designated officers. Its holding is equally instructive to statutes that limit the ability of Article III judges to review the rulings of non-Article III judges in private-rights disputes.

Just as adjuncts of the President must remain subject to his control when wielding executive power, so too must an adjunct of the judiciary be subject to *de novo* review on all determinations—both legal and factual—made in a private-rights dispute, regardless of whether that dispute arises in a "core" or "non-core" proceeding. *Stern* has already taken a large step in that direction by forbidding bankruptcy judges to enter final judgments in a private-rights matter, even when the dispute is considered a "core" proceeding under section 157. It is time for the courts to drop the other shoe and require district courts to exercise *de novo* review over a bankruptcy court's legal and factual determinations in private-rights cases.

VII. The Bankruptcy Court Erred in Limiting Discovery and Testimony

The bankruptcy court erred by barring Dugaboy from developing critical evidence in discovery and presenting a key witness at the hearing.

A. The Bankruptcy Court Restricted Discovery without Good Cause

The bankruptcy court erred by limiting discovery only to events *after* Highland and Mr. Patrick filed a motion seeking approval of the settlement in question. Dkt. 4566 at 2–5. This ruling was upside down, as only events occurring before settlement approval would have been relevant to whether the settlement was infected with fraud and misconduct. It was a misreading of Rule 60(b)(2), which seeks "newly discovered *evidence*" of *events* occurring before the ruling to be vacated.

And it is directly contrary to precedent regarding discovery to support a Rule 60(b) motion. A Rule 60(b) movant is entitled to discovery when it has made "at least some showing of fraud." *Halliburton Energy Servs., Inc. v. NL Indus.*, 618 F. Supp. 2d 614, 654 (S.D. Tex. 2009). And Dugaboy did, submitting extensive exhibits outlining the basis of its fraud allegations. (*See* R. 000676–78, R. 000682–97.) After this threshold showing, the bankruptcy court should have considered only specific objections to individual discovery requests rather than a wholesale limitation. *See McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990); *see also Cazorla v. Koch Foods of Miss., L.L.C.*, 838 F.3d 540, 549 (5th Cir. 2016); Fed. R. Civ. P. 26(c)(1) (requiring the party requesting a protective order to show good cause through "a particular and specific demonstration of fact").

Finally, the bankruptcy court should have allowed Dugaboy full discovery because Highland had already agreed to, and benefited from, discovery responses from Dugaboy when the protective order was imposed. (*See* R. 003661; R. 005412–25.) Discovery is meant to be a two-way street. *See Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1345–46 (5th Cir. 1978).

B. The Bankruptcy Court Erred by Restricting Mr. Dondero's Live Testimony, But Admitting His Deposition

The bankruptcy court improperly restricted Dugaboy's case-in-chief by barring Mr. Dondero from testifying live in the hearing except as a rebuttal witness, but

allowing Highland to sponsor his testimony by admitting his deposition transcript.[3] The bankruptcy court justified this exclusion based on Dugaboy's asserted failure to include Mr. Dondero on a witness list submitted at least three days before the whole proceeding began. (*See* 5.21.26 Hr'g Tr. at 20:22–21:14).

First, the bankruptcy judge's ruling misread the procedural rules. Dugaboy listed Mr. Dondero on an amended witness list six days before the hearing where he was going to testify. R. 015535. That complied with Local Bankruptcy Rule 9014-1(c)(2) because it was "3 calendar days before *the scheduled hearing date*." (emphasis added). The judge specific rule adds an additional, ambiguous restriction attempting to interpret the local bankruptcy rule, but that is not what the local rule says. *See* Chamber Rule (providing that "[p]er L.B.R. 9014-1(c)(2), lists of witnesses … must be filed and exchanged three calendar days in advance of the *first date set* for the … hearing." (emphasis added)). To the extent that interpretation sets an earlier date keyed off the beginning of the whole proceeding, it yields to the text of the Local Rule. *See* Fed. R. Bankr. P. 9029(c); Fed. R. Civ. P. 83; *Washington v. Edwards Lifesciences, L.L.C.*, No. 25-10357, 2025 WL 3092764, at *3–4 (5th Cir. Nov. 5, 2025).

[3] As discussed above, among other things, Mr. Dondero was prepared to testify about the predecessor bankruptcy judge's novel writing, the basis for her recusal. *See supra* Section V.A.

In any event, Dugaboy still effectively listed Mr. Dondero as a witness on its original witness list, filed before the whole proceeding began, by "reserv[ing] the right to call or cross-examine any witness called by any other party." R. 005937. Highland, meanwhile, expressly listed Mr. Dondero as a witness, without any reservations, *on every witness list* leading up to the May 21 hearing. (*See* R. 006095, 008182, 008287, 008423, and 016054.)

Regardless, Federal Rule of Civil Procedure 37(c)(1) excuses noncompliance with Rule 26(a)—the rule underpinning Local Rule 9014-1(c)—where a party's failure to list a witness "was substantially justified or is harmless." Indeed, the Advisory Committee expressly countenanced the very situation here and concluded it would be error to exclude a witness where the violation was harmless, such as with "the failure to list as a trial witness a person so listed by another party." Fed. R. Civ. P. 37(c)(1) advisory committee's note to 1993 amendment.

Second, at Highland's urging, the bankruptcy court erroneously admitted Mr. Dondero's deposition over his live testimony, on grounds Mr. Dondero was an "agent" for Dugaboy. (5/21/26 Hr'g Tr. at 98:11–18 (discussing Fed. R. Civ. P. 32(a)(1))). But the Fifth Circuit has made clear that, even if Rule 32(a) allows the admission of an opposing party's deposition into evidence, this is not a favored substitute for live testimony. *See Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d 416, 434 (5th Cir. 2006). Instead, "if a Rule 30(b)(6) witness is made available at trial,

he should be allowed to testify as to matters within corporate knowledge to which he testified in deposition." *Id.*

This error is worse because the bankruptcy court allowed Highland to eschew Mr. Dondero's live testimony strategically. *Highland was calling Mr. Dondero through sponsoring his testimony by deposition*, but the bankruptcy court still allowed Highland to avoid the consequences of calling him—that his testimony could be sought by its opponent for any purpose.

CONCLUSION

The bankruptcy court's order denying Dugaboy's Rule 60(b) motion should be reversed. The order approving the Highland/Hunter Mountain settlement should be vacated.

Dated: October 1, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 1, 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/ Michael J. Edney
Michael J. Edney

CERTIFICATE OF COMPLIANCE

I hereby certify that this document complies with the type-volume limitations of Federal Rule of Bankruptcy Procedure 8015(a)(7)(B), as modified by this Court's order enlarging the word limit, as it contains 12,960 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)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14- point Times New Roman (12-point in footnotes).

Dated: October 1, 2026

Respectfully submitted,

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Case No. 3:26-cv-02315-X

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.

Appellee

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

APPENDIX TO APPELLANT'S OPENING BRIEF

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	Record Reference	Exhibit Description	Doc Date(s)	Page Range
1.	Order Denying Dugaboy's Motion for Relief From Order and Motion to Vacate under Federal Rule of Civil Procedure 60(b)	Dkt. 4678	06/15/2026	R. 016459 R. 016468–72
2.	Notice of Appeal of the bankruptcy court's denial of its Rule 60(b) motion	Dkt. 4685	06/29/2026	R. 000654
3.	Dugaboy 60(b) Reply Brief in Objection to motion to reconsider	Dkt. 4607	05/08/2026	R. 005939 R. 005942
4.	Dugaboy Motion for Relief from Order and Motion to Vacate pursuant to Federal Rule of Civil Procedure 60(b) ("Motion to Reconsider")	Dkt. 4513	02/09/2026	R. 000642–701 R. 000655–60 R. 000662 R. 000665 R. 000673
5.	Full-text copy of Chief Judge Jernigan book, lodging *Hedging Death*	Dkt. 4513–56	02/09/2026	R. 001827
6.	Full-text copy of Chief Judge Jernigan book, lodging *He Watches All My Paths*	Dkt. 4513–57	02/09/2026	R. 001828
7.	Redacted Judicial Council for the Fifth Circuit's dispositions describing the corrective action that led to Chief Judge Jernigan's recusal	Dkt. 4513–35	02/09/2026	R. 001423–30
8.	Redacted Judicial Council for the Fifth Circuit's dispositions describing the corrective action that led to Chief Judge Jernigan's recusal	Dkt. 4513–36	02/09/2026	R. 001431–36
9.	Redacted Judicial Council for the Fifth Circuit's dispositions describing the corrective action	Dkt. 4513–37	02/09/2026	R. 001437–42

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	that led to Chief Judge Jernigan's recusal			
10.	Excerpt of *Hedging Death*	Dkt. 4513–38	02/09/2026	R. 001443–78
11.	Scheduling Order for Rule 60(b) Motion	Dkt. 4528	03/04/2026	R. 003661
12.	Dugaboy Resp. to Highland Mot. for Protective Order	Dkt. 4551	04/17/2026	R. 005324
13.	Dugaboy Amended Witness List	Dkt. 4658	05/15/2026	R. 015535
14.	Dugaboy Witness List	Dkt. 4605	05/08/2026	R. 005936
15.	Highland Capital Witness List and Exhibit List	Dkt. 4608	05/08/2026	R. 006094
16.	Highland Capital Amended Witness List and Exhibit List	Dkt. 4611	05/09/2026	R. 008182
17.	Highland Capital Amended Witness List and Exhibit List	Dkt. 4613	05/11/2026	R. 008287
18.	Highland Capital Amended Witness List and Exhibit List	Dkt. 4614	05/11/2026	R. 008423
19.	Highland Capital Amended Witness List and Exhibit List	Dkt. 4665	05/21/2026	R. 016054
20.	Hunter Mountain Trust Agreement	Dkt. 4617–1	05/11/2026	R. 008484, R. 008486–87, R. 008489
21.	Nov. 2023 Shields Work Plan	Dkt. 4617–7	05/11/2026	R. 008652–59
22.	COI establishing DFW Charitable Foundation	Dkt. 4617–8	05/11/2026	R. 008660–64
23.	COF of CDMCFAD, LLC	Dkt. 4617–9	05/11/2026	R. 008665–67
24.	Email: choose a "generic name" that was "hard to find or track, or trace."	Dkt. 4623–2	05/11/2026	R. 0010711
25.	Membership Interest Purchase Agreement	Dkt. 4617–15	05/11/2026	R. 008816–24
26.	Valuation Analysis of 100 Participation Shares of Charitable DAF 2024	Dkt. 4619–15	05/11/2026	R. 009806

	Record Reference	Exhibit Description	Doc Date(s)	Page Range
27.	Valuation Analysis of 100 Participation Shares of Charitable DAF March 2025	Dkt. 4617–12	05/11/2026	R. 008737
28.	Redemption and Amendment No. 2 Agreement	Dkt. 4617–13	05/11/2026	R. 008809–11
29.	Settlement Agreement	Dkt. 4513–27	02/09/2026	R. 001280–88
30.	Binding Term Sheet	Dkt. 4513–30	02/09/2026	R. 001301
31.	M. Patrick Deposition Excerpt	Dkt. 4669–1	05/23/2025	R. 016189
32.	(Patrick Dep. Tr.) at 12:9–23	Dkt. 4592–2	05/05/2026	R. 005799
33.	Written Consent of Managing Member of Charitable DAF	Dkt. 4619–16	05/11/2026	R. 009859
34.	June 25, 2025 Hearing Transcript	Dkt. 4618–13	05/11/2026	R. 009314 R. 009463
35.	Cayman liquidators Statement of Claim / Writ of Summons	Dkt. 4521–1	02/27/2026	R. 001839 R. 001849–1931
36.	Stay of Settlement Approval Denied	Dkt. 4513–34	02/09/2026	R. 001420 R. 001422
37.	Recusal Motion Denied	Dkt. 4513–41	02/09/2026	R. 001492
38.	Fifth Circuit Judicial Council Resolutions of the ethics complaints	Dkt. 4513–35	12/29/2025	R. 001424
39.	Chief Judge Jernigan's recusal from this case and professional education	Dkt. 4513–35	02/09/2026	R. 001429
40.	Highland moved for a protective order to prevent any discovery being taken prior to the hearing and related parties sought to quash Dugaboy's discovery efforts	Dkt. 4533	04/01/2026	R. 003664
41.	Motion to Quash	Dkt. 4538	04/06/2026	R. 005203
42.	Dugaboy's Motion to Modify the Relevant Time Period for Discovery	Dkt. 4570	04/28/2026	R. 005749

	Record Reference	Exhibit Description	Doc Date(s)	Page Range
43.	Court further denied Dugaboy's Motion to Modify the Relevant Time Period for Discovery	Dkt. 4584	05/01/2026	R. 005790
44.	Dondero Affidavit	Dkt. 4607–3	05/08/2026	R. 006062 R. 006066–70
45.	Trust Agreement	Dkt. 4608–1	05/08/2026	R. 006107–12
46.	Morris Declaration	Dkt. 4534	04/01/2026	R. 004684

Dated: October 1, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 1, 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.

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