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., et al.,
Appellees

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

BRIEF OF APPELLEES HIGHLAND CAPITAL MANAGEMENT, L.P. AND HIGHLAND CLAIMANT TRUST

Mark T. Stancil (*pro hac vice*)
mstancil@willkie.com
Joshua S. Levy (*pro hac vice*)
jlevy@willkie.com
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006
T: (202) 303-1000

John A. Morris (*pro hac vice*)
jmorris@pszjlaw.com
PACHULSKI STANG ZIEHL & JONES LLP
1700 Broadway, 36th Fl.
New York, NY 10019
T: (212) 561-7700
F: (212) 561-7777

193405426110300000000007

Jeffrey N. Pomerantz (*pro hac vice*)
jpomerantz@pszjlaw.com
Gregory V. Demo (*pro hac vice*)
gdemo@pszjlaw.com
Jordan A. Kroop (*pro hac vice*)
jkroop@pszjlaw.com
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Fl.
Los Angeles, CA 90067
T: (310) 277-6910
F: (310) 201-0760

Melissa S. Hayward
MHayward@HaywardFirm.com
Zachery Z. Annable
ZAnnable@HaywardFirm.com
HAYWARD PLLC
10501 N. Central Expwy., Ste. 106
Dallas, TX 75231
T: (972) 755-7100
F: (972) 755-7110

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Highland Capital Management, L.P. and the Highland Claimant Trust (together, "Appellees"), appellees in the above-referenced matter (the "Appeal"), pursuant to Federal Rule of Bankruptcy Procedure 8012 and Rule 8012.1 of the Local Bankruptcy Rules of the Northern District of Texas, hereby submit the following *Certificate of Interested Persons* (the "CIP"):

1. Highland Capital Management, L.P., appellee in this Appeal and the reorganized debtor in the bankruptcy case captioned *In re Highland Capital Management, L.P.*, Case No. 19-34054-sgj11 pending in the United States Bankruptcy Court for the Northern District of Texas, and its counsel, John A. Morris, Jeffrey N. Pomerantz, and Gregory V. Demo of Pachulski Stang Ziehl & Jones LLP; Mark T. Stancil and Joshua S. Levy of Willkie Farr & Gallagher LLP; and Melissa S. Hayward and Zachery Z. Annable of Hayward PLLC. Highland Capital Management, L.P. is a limited partnership, the general partner of which is HCMLP GP LLC, a privately held limited liability company. No publicly held corporation owns 10% or more of the interests in either entity.

2. Highland Claimant Trust, appellee in this Appeal, and its counsel, John A. Morris, Jeffrey N. Pomerantz, and Gregory V. Demo of Pachulski Stang Ziehl & Jones LLP; Mark T. Stancil and Joshua S. Levy of Willkie Farr & Gallagher LLP; and Melissa S. Hayward and Zachery Z. Annable of Hayward PLLC.

3. The Dugaboy Investment Trust, appellant in this Appeal, and its counsel 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. Appellees reserve the right to amend or supplement this CIP as and if necessary or appropriate.

Dated: November 2, 2026

/s/ Zachery Z. Annable
Zachery Z. Annable

TABLE OF CONTENTS

PAGE

STATEMENT REGARDING ORAL ARGUMENT 1
PRELIMINARY STATEMENT 1
STATEMENT OF ISSUES 3
STANDARD OF REVIEW 5
STATEMENT OF THE CASE 5
The Bankruptcy Case 5
HMIT 8
The DAF Structure 10
Patrick's Restructuring 11
The 9019 Settlement And Hearing 14
Texas Business Court Lawsuit 17
Seven Months Later, Dugaboy Filed Its Rule 60(b) Motion 18
SUMMARY OF ARGUMENT 21
ARGUMENT 23
I. THE BANKRUPTCY COURT CORRECTLY HELD THAT FRAUD ALLEGED UNDER RULE 60(B)(3) MUST "PREVENT THE LOSING PARTY FROM FULLY AND FAIRLY PRESENTING ITS CASE" 23
II. THE BANKRUPTCY COURT APPLIED THE CORRECT STANDARD TO THE 9019 SETTLEMENT 29
III. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT DUGABOY LACKED "NEWLY DISCOVERED" EVIDENCE UNDER FRCP 60(B)(2) 31
A. The Dondero Affidavit 31
B. The Supervision Application 33
C. The 9019 Motion, Discovery, And Hearing 35
D. The Texas Business Court Lawsuit 39
IV. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN HOLDING THAT DUGABOY FAILED TO DEMONSTRATE ANY RELEVANT OR COGNIZABLE FRAUD UNDER RULE 60(B)(3) 41
A. The Bankruptcy Court Did Not Refuse To Consider Evidence Of "Extrinsic" Fraud 41

B. Patrick's Purported "Deceptive Conduct" Did Not Prevent Dugaboy From Presenting Its Case At The 9019 Hearing.....42
C. There Is Zero Evidence Of "Discovery Misconduct" By Highland.....43
V. THE BANKRUPTCY COURT PROPERLY REFUSED TO CONSIDER DUGABOY'S (BELATED) RECUSAL CHALLENGE.....45
A. Forfeiture #1: Dugaboy Failed To Argue Recusal In Connection With The Rule 9019 Motion.....45
B. Forfeiture #2: Dugaboy Failed To Pursue Its Fact-Dependent Recusal Theory During The Rule 60(b) Hearing.....47
C. Dugaboy's Merits Argument Grossly Mischaracterizes The Fifth Circuit's Rulings.....49
VI. DUGABOY'S CLAIM THAT THE BANKRUPTCY COURT'S FACTUAL FINDINGS MUST BE REVIEWED *DE NOVO* IS FORFEITED AND FORECLOSED BY SUPREME COURT AUTHORITY.....51
VII. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN LIMITING DUGABOY'S ADDITIONAL DISCOVERY, OR IN PERMITTING DONDERO TO TESTIFY ONLY ON REBUTTAL IN COMPLIANCE WITH LOCAL AND CHAMBERS RULES.....53
A. The Bankruptcy Court Did Not Abuse Its Discretion In Limiting The Scope Of Dugaboy's Discovery.....53
B. The Bankruptcy Court Did Not Abuse Its Discretion In Enforcing Its Witness Rules.....54
CONCLUSION.....57

TABLE OF AUTHORITIES

Cases **Page(s)**

Bonner v. Adams (In re Adams),
734 F.2d 1094 (5th Cir. 1984) 55

Brazos River Auth. v. GE Ionics, Inc.,
469 F.3d 416 (5th Cir. 2006) 56

Cheseroni v. Nationwide Mut. Ins. Co.,
402 A.2d 1215 (Del. Super. Ct. 1979).....28

In re Deepwater Horizon,
934 F.3d 434 (5th Cir. 2019) 48

Dondero v. Jernigan,
2025 WL 1122466 (5th Cir. Apr. 16, 2025).....46, 49, 50

In re Enron Corp.,
2005 WL 1637912 (S.D. Tex. June 14, 2005).....41

Highland Cap. Mgmt. Fund Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.),
57 F.4th 494 (5th Cir. 2023) 7

Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Cap. Mgmt., L.P.),
2021 WL 2326350 (Bankr. N.D. Tex. June 7, 2021) 7

In re Highland Cap. Mgmt. LP,
102 F.4th 286 (5th Cir. 2024) 6

Huff v. Int'l Longshoremen's Ass'n, Loc. No. 24,
799 F.2d 1087 (5th Cir. 1986) 5

In re Josiahs Trucking, LLC,
2025 WL 2214038 (Bankr. S.D. Tex. Aug. 4, 2025) 52

Kitchell v. Aspen Expl., Inc.,
562 F. Supp. 2d 843 (E.D. Tex. 2007).....41

Longden v. Sunderman,
979 F.2d 1095 (5th Cir. 1992) .....*passim*

New Castle Cnty., Del. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.,
174 F.3d 338 (3d Cir. 1999) 27

NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.),
48 F.4th 419 (5th Cir. 2022) 7

Pryor v. U.S. Postal Service,
769 F.2d 281 (5th Cir. 1985) 5

Seven Elves, Inc. v. Eskenazi,
635 F.2d 396 (5th Cir. 1981) 5

Stern v. Marshall,
564 U.S. 462 (2011).....4, 23, 52

Sudo Props., Inc. v. Terrebonne Par. Consol. Gov't,
503 F.3d 371 (5th Cir. 2007) 41

Town N. Bank N.A. v. Shay Fin. Servs., Inc.,
2014 WL 4851558 (N.D. Tex. Sep. 30, 2014) 41

Travelers Ins. Co. v. Liljeberg Enters., Inc.,
38 F.3d 1404 (5th Cir. 1994) 46

Trump v. Slaughter,
609 U.S. 422 (2026).....52

United States v. Garrett,
15 F.4th 335 (5th Cir. 2021) 33

United States v. Scroggins,
599 F.3d 433 (5th Cir. 2010) 26

United States v. York,
888 F.2d 1050 (5th Cir. 1989) 47

Washington v. Edwards Lifesciences, L.L.C.,
2025 WL 3092764 (5th Cir. Nov. 5, 2025) 54

Wellness Int'l Network, Ltd. v. Sharif,
575 U.S. 665 (2015).....51

Willis v. Cleco Corp.,
749 F.3d 314 (5th Cir. 2014).....26

Statutes

11 U.S.C. § 363(m).....17

28 U.S.C. § 455(a).....46, 47

28 U.S.C. § 455(e).....46

Other Authorities

Fed. R. Bankr. P. 9014(c).....36

Fed. R. Bankr. P. 9019.....*passim*

Fed. R. Bankr. P. 9023.....40

Fed. R. Bankr. P. 9024.....2, 40

Fed. R. Civ. P. 30(b)(6).....56, 57

Fed. R. Civ. P. 32(a)(3).....56

Fed. R. Civ. P. 37.....56

Fed. R. Civ. P. 60(b)(2).....31, 41

Fed. R. Civ. P. 60(b)(3).....*passim*

Fed. R. Civ. P. 60(b)(6).....21

Fed. R. Evid. 201(b).....48

Local Bankruptcy Rule 9014-1(c)(2).....55, 56

STATEMENT REGARDING ORAL ARGUMENT

To facilitate expeditious resolution, the Court may wish to schedule consolidated oral argument on all related appeals arising from the Rule 9019 Settlement.

PRELIMINARY STATEMENT

Appellant The Dugaboy Investment Trust's ("Dugaboy") opening brief ("Br.") is long on rhetoric, short on evidence, and divorced from reality. That is why page after page lacks any citation, and many of its assertions cite only Dugaboy's prior pleadings. In this brief, by contrast, Appellees Highland Capital Management, L.P. and Highland Claimant Trust (together, "Highland") provide direct support for each statement, demonstrating that Dugaboy's tale of victimhood is pure fiction.

The Bankruptcy Rule 9019 Settlement (the "Settlement") at issue here resolved long-running disputes between Highland and Hunter Mountain Investment Trust ("HMIT"), which holds Class 10 interests under the court-approved Bankruptcy Plan (the "Plan"). After Dugaboy (controlled by James Dondero) and others objected to the Settlement, the parties exchanged reams of documents and conducted numerous depositions in advance of the June 25, 2025, hearing to consider the Settlement (the "9019 Hearing"). And even after the purported economic stakeholders (whose objections were financed by Dondero) withdrew their objections with prejudice, the bankruptcy court permitted Dugaboy to press

arguments it had failed to raise in its objection and held a full-day evidentiary hearing. Dugaboy had its day in court, and then some.

Dugaboy filed its Rule 60(b) motion nearly eight months later, claiming both that it had newly discovered evidence and that the order approving the Settlement had been obtained by fraud.[1] But after still further discovery and a three-day evidentiary hearing, Dugaboy failed to meet its burden of proof on either claim. Instead, the evidence overwhelmingly confirmed that Dugaboy and Dondero were merely rehashing the same irrelevant story they failed to sell the first time around.

Their theory was that Mark Patrick, who controlled HMIT, engaged in certain unauthorized corporate restructuring transactions months before, and wholly unrelated to, the Settlement. ***But the record shows beyond any conceivable doubt that Patrick had sole authority to execute the Settlement before and after those restructuring transactions were effectuated—indeed, he retains sole authority over all HMIT signatories to this day***. That is why the bankruptcy court found—as Dugaboy's own witness and trial counsel conceded—that overturning the Settlement would not undo the prior restructuring transactions. And the record confirms that Dugaboy knew full well about these transactions before the 9019 Hearing. Dugaboy filed its Rule 60(b) motion merely to take another swing at arguing that Dondero's

[1] With minor modifications, Bankruptcy Rule 9024 makes Federal Rule of Civil Procedure ("FRCP") 60 applicable in bankruptcy cases.

unrelated dispute with Patrick should somehow unravel the Settlement, which was indisputably in the best interests of Highland's estate. The bankruptcy court afforded Dugaboy every reasonable opportunity to meet the high burden that Rule 60(b) relief demands before denying Dugaboy's motion. None of the appellate issues Dugaboy now presses—many of which were not even raised below—remotely suggests the bankruptcy court abused its discretion.

STATEMENT OF ISSUES

1. Whether the bankruptcy court correctly held that allegedly fraudulent conduct under FRCP 60(b)(3) "'must be such as to prevent the losing party from fully and fairly presenting its case or defense,'" R.016467 (quoting *Longden v. Sunderman*, 979 F.2d 1095, 1103 (5th Cir. 1992)).

2. Whether the bankruptcy court should have adopted a novel heightened standard when reviewing a motion under Bankruptcy Rule 9019 because the estate is managed by "court-appointed bankruptcy professionals" (Br. 29).

3. Whether the bankruptcy court abused its discretion in finding that Dugaboy failed to adduce new evidence under FRCP 60(b)(2) that could not have been timely discovered through the exercise of reasonable diligence, and that would have changed the outcome.

4. Whether the bankruptcy court abused its discretion in finding that Dugaboy failed to prove by clear and convincing evidence that it was prevented from fully and fairly presenting its case at the 9019 Hearing.

5. Whether the bankruptcy court abused its discretion in rejecting Dugaboy's recusal argument, where Dugaboy (i) failed to raise recusal at the 9019 Hearing, despite being fully aware of the circumstances it claims warranted recusal; and (ii) abandoned this argument during the Rule 60(b) trial.

6. Whether the bankruptcy court lacked authority to enter final judgment under *Stern v. Marshall*, 564 U.S. 462 (2011), even though Dugaboy plainly forfeited any such argument, and, in any event, approval of a Rule 9019 settlement is squarely within bankruptcy courts' traditional domain.

7. Whether the bankruptcy court abused its discretion by (i) limiting the scope of Dugaboy's document discovery; (ii) precluding Dugaboy from calling Dondero in its case-in-chief after Dugaboy intentionally failed to include him on its pre-trial witness list; and (iii) admitting Dondero's deposition testimony into evidence when he testified as Dugaboy's designated agent.

STANDARD OF REVIEW

On appeal, "'[i]t is not enough that the granting of relief [under Rule 60(b)] might have been permissible, or even warranted, denial must have been so *unwarranted* as to constitute an abuse of discretion.'" *Huff v. Int'l Longshoremen's Ass'n, Loc. No. 24*, 799 F.2d 1087, 1091 (5th Cir. 1986) (quoting *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981)). Purely legal questions are reviewed de novo and factual questions are reviewed for clear error, but ultimately "***[a]ppellate review of a denial of a rule 60(b) motion must be narrower in scope than review of the underlying order of dismissal so as not to vitiate the requirement of a timely appeal.***" *Id.* (quoting *Pryor v. U.S. Postal Service*, 769 F.2d 281, 286 (5th Cir. 1985)) (emphases added).

STATEMENT OF THE CASE

The Bankruptcy Case

In October 2019, Highland—then controlled by Dondero—voluntarily filed a Chapter 11 petition to stay the enforcement of a $190-million arbitration award and address other significant claims. R.008938–39, R.008941; R.000725 (12/6/2019 Tr. 9:13–21). The award was based on determinations that Highland breached its fiduciary duties and contractual obligations, wrongfully converted approximately $30 million in investor funds, and violated a Bermudian court order by using proxies

to surreptitiously acquire equity in an investment vehicle. *See In re Highland Cap. Mgmt. LP*, 102 F.4th 286, 288 (5th Cir. 2024).

A full recounting of the Chapter 11 proceedings is unnecessary to this appeal, but we note that Dugaboy knowingly misrepresents even the basic history of the case. For example:

- Dugaboy claims that Dondero was told by "the Pachulski law firm" that Highland would quickly exit Chapter 11 after selling a "handful of assets." (Br. 12.) In fact, Dondero was advised in writing that, among numerous substantial risks of a Chapter 11, "existing management [*i.e.*, Dondero] could be replaced"; venue could be transferred from Delaware to Texas; and Highland's solvency was "uncertain." Dkt. 3998-2 at 1–2.

- Dugaboy claims that "Highland had enough assets to pay . . . the inflated claims of all creditors." (Br. 13.) In fact, when the Plan was confirmed in 2021, Highland's unchallenged Liquidation Analysis projected that general unsecured creditors would recover only 71.32% under the Plan. R.007682 (6/8/2023 Tr. 150:7–24); *see also* Dkt. 1860 (***Dondero's*** proposed plan filed shortly before confirmation).

- Dugaboy claims that "Judge Jernigan insisted" on Dondero's removal. (Br. 13.) In fact, the Official Committee of Unsecured Creditors ("UCC") and the U.S. Trustee expressed concern about Dondero's history of self-dealing, R.008943–44, and the U.S. Trustee moved for formal appointment of a Chapter 11 Trustee. Dkt. 271. In response, Highland, the UCC, and Dondero executed a settlement under which Dondero voluntarily surrendered his control positions at Highland and an independent oversight board was appointed to oversee the case. R.008944–45.

Given Dugaboy's claims in this appeal, it is important to recall that Dondero has repeatedly attempted to disrupt Highland's bankruptcy case. The independent board demanded and received Dondero's resignation from all positions at Highland in October 2020 after Dondero acted adversely to Highland's estate and its creditors.

R.008939, R.008951. And after Dondero's attempt to retake control of Highland failed, he vowed to "burn the place down," *NexPoint Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 48 F.4th 419, 426 (5th Cir. 2022), and threatened James Seery, Highland's court-approved CEO: "Be careful what you do, last warning." *Highland Cap. Mgmt., L.P. v. Dondero (In re Highland Cap. Mgmt., L.P.)*, 2021 WL 2326350, at *7 (Bankr. N.D. Tex. June 7, 2021).

Threats notwithstanding, Highland's Plan was confirmed in February 2021, over Dondero's objections (which, notably, omitted any challenge to Highland's insolvency). *See generally* Dkts. 1661, 1667, 1670, 1673, 1676, 1677. In the Confirmation Order, the court made detailed factual findings about Dondero and his affiliates, including that Dondero was using litigation (directly and by proxy) to harass Highland, its management, and its estate. *See, e.g.*, R.008952, R.008986–90. The Confirmation Order's factual findings were either unchallenged or affirmed on appeal. *See NexPoint Advisors, L.P.*, 48 F.4th at 427–28, 434–35; *Highland Cap. Mgmt. Fund Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 57 F.4th 494, 498 (5th Cir. 2023). Years later, Dondero and his affiliates continue to make good on his threats, maintaining a torrent of litigation in the bankruptcy court, district court, Fifth Circuit, and Supreme Court.

None of it has succeeded in any material respect.

HMIT

HMIT was created in 2015 "to shelter hundreds of millions of dollars of income from taxes that Dondero and [his minority partner] were going to be hit with" from Highland-generated tax liabilities in 2016. 5/21/2026 Tr. 53:16–19.[2] Through a series of transactions, Dondero caused Highland to make *loans* and distributions to him (via Dugaboy) and his former minority partner totaling approximately $30 million, which they immediately "donated" to newly created nonprofits, including Dondero's vehicle called Empower Dallas. R.006738–39. Empower Dallas then sent a portion of those funds through intermediaries to HMIT. R.006738–39, R.006743–46. HMIT, in turn, used that cash and newly issued promissory notes to *purchase* (i) existing Highland equity from Dondero (which he owned via Dugaboy) and his partner; and (ii) new equity that Highland issued. R.006741, R.006746; R.000809; *see also* R.000658. The net result was that HMIT (i) came to own all of the senior Class B/C limited partnership interests in Highland (which accounted for 99.50% of the total economic equity interests), but (ii) *owed* a $62.66 million note to Dugaboy and a $63 million note to Highland. *See* R.008501; R.007838. HMIT later paid some of those owed amounts to Dugaboy (*i.e.*, Dondero) and Highland (*i.e.*, Dondero) as it received cash distributions from Highland. Ultimately, nothing from Dondero's

[2] Dugaboy designated the transcripts of the April 29 and May 11, 12, and 21, 2026, hearings for the record on appeal, but they were transmitted separately and not included in the paginated record. *See* Dkt. 4705 ¶ 8(b)–(c). Highland therefore cites them by date and transcript page.

supposedly generous gift—in actuality, a sale—of his Highland equity to HMIT ever made it to charitable causes, and HMIT has never given a dime to charity. *See* R.006742, R.006744, R.006746; R.002099.

An essential requirement of the tax scheme underlying HMIT was the separation of the supposed "donor" from the "charity": Dondero could not control HMIT or certain intermediary entities. Accordingly, HMIT was originally managed by Dondero's long-time friend and former employee, John Honis. *See* 5/12/2026 Tr. (Patrick) 88:17–22; R.006107–118; R.006745; R.009379 (6/25/2025 Tr. 98:11–18). In 2022, Honis transferred control over HMIT to Dondero's then-employee, Patrick. *See* 5/12/2026 Tr. 88:23–25; R.006120; R.009379 (6/25/2025 Tr. 98:11–18). Patrick has fully controlled HMIT ever since. *See* 5/12/2026 Tr. 88:14–16; 108:3–24; 118:3–14.

Because HMIT held the senior prepetition equity stake in Highland (which became a Class 10 interest under the Plan), it occupies an important position in Highland's bankruptcy. If all of Highland's creditors and senior obligations (including indemnification claims) are satisfied, HMIT's Class 10 interest vests under the Plan and it receives any surplus value up to the allowed amount of its Class 10 interest. *See* 5/12/2026 Tr. (Seery) 24:1–22. The junior prepetition equity stake in Highland—*i.e.*, the Class A limited partnership interests comprising the remaining 0.50% of Highland's limited partnership interests—became Class 11 interests. *See*

5/12/2026 Tr. 24:15–18; R.005193; R.009034–35, R.009052. The Plan provides that Class 11 interests are "subordinated" to Class 10 and are "contingent" and "shall not vest," unless and until all of the senior obligations are paid in full. R.009036, R.009052–53. Dugaboy holds a *de minimis* Class 11 interest, having held only 0.1866% of the total prepetition limited partnership interests in Highland. R.001558. Neither Dondero nor Dugaboy has ever had—and for the tax reasons explained above, *cannot* have—control over HMIT.

The DAF Structure

The "DAF" structure features prominently in Dugaboy's appeal but has no claim or interest in the Highland bankruptcy. It comprises a web of domestic and Cayman Islands entities that Dondero caused to be created in 2011. *See* R.008268; 5/21/2026 Tr. (Dondero) 135:13–137:11. Neither Dondero nor Dugaboy has ever controlled the DAF structure—nor can they, again, largely for tax reasons. *See, e.g.*, R.005514, R.005527–28. Accordingly, the original control person over the DAF structure was Grant Scott (Dondero's college roommate and best man at his first wedding). R.004973. In 2021, Scott transferred exclusive control to Patrick. R.004974.

Unlike HMIT, the DAF structure has given *some* money to charitable causes over the years, although Dugaboy omits important details about the DAF structure that reflect less flatteringly on Dondero's "charitable legacy" (Br. 3). For example,

although Dondero was ostensibly barred from *controlling* the DAF, Highland (then-Dondero-controlled) managed its assets and charged hefty fees,[3] and the DAF invested almost exclusively in Dondero-affiliated entities. Moreover, while several nonprofits were identified as the discretionary beneficiaries of Cayman Islands Charitable DAF Holdco, Ltd. ("Holdco"), a passive tax-blocker entity atop the DAF structure, R.004004, the documents expressly granted to the control person (*i.e.*, Patrick) exclusive authority and discretion to determine whether and in what amount to make charitable distributions in a given year, *and* to add, remove, or replace a discretionary beneficiary from the DAF structure for any reason, at any time. R.004035–38, R.008590–98; *see also* 5/12/2026 Tr. 38:17–18, 38:25–39:2. Accordingly, Dugaboy's claim that the DAF's discretionary beneficiaries "owne[d]" the DAF's assets (Br. 14) is false.

Patrick's Restructuring

Patrick was a tax professional at Highland who helped design the HMIT and DAF schemes for Dondero's benefit. And for a long time after Patrick was granted exclusive control over both structures, Dondero supported Patrick's decisions, which aligned with Dondero's objectives. Most notably, Dondero and Patrick/HMIT

[3] Between 2014 and 2020, the DAF structure paid about $28.5 million to Dondero-related entities for investment management. R.005555–56.

worked hand-in-hand to launch various (unsuccessful) litigations against Highland. *See, e.g.*, R.000969–1005, Dkt. 3904.

In late 2024, however, the two men had a falling out and Patrick ceased working for Dondero. R.009474, R.009477 (6/25/2025 Tr. 193:18–25, 196:3–6); R.004665. Having separated from Dondero, Patrick and Paul Murphy (the DAF's independent director), "in conjunction with advice of a variety of counsel, undertook [to] change [] the discretionary beneficiary" of the DAF. 5/12/2026 Tr. (Patrick) 110:1–4. Patrick identified "three princip[al] reasons" motivating that change: (1) "the actions of Mr. Dondero" in exerting undue influence via his board seat on each of the "Supporting Organizations" "jeopardiz[ed] their tax-exempt status"; (2) "a variety of aggressive requests" from Dondero to the DAF, including "to make a wire out of the DAF Entities in November of 2023 that was considered to be inappropriate and illegal"; and (3) "an overarching concern that Mr. Dondero's creditors would argue and apply an alter ego theory with respect to the assets of the DAF." *Id.* 110:5–23.

Accordingly, through a series of transactions undertaken in late 2024 and early 2025, Patrick replaced the prior discretionary beneficiaries with a new 501(c)(3) called DFW Charitable Foundation, which Patrick co-manages with an independent director. *See id.* 17:19–18:19. The prior beneficiaries received payments of approximately $1.6 million, based on a third-party opinion valuing their

entirely discretionary arrangement under the DAF structure.[4] *See id.* 33:6–34:12; R.008733–37.

During the same period, Patrick caused certain changes to be made to the corporate structure through which he continued to control and manage HMIT. Those included the February 12, 2025, sale of Beacon Mountain, LLC (HMIT's sole beneficiary) by Rand PE Fund I, L.P. to CLO Holdco, LLC—an entity within the DAF structure—for $1 million, with Patrick exercising his preexisting control by executing for both buyer (within the DAF structure) and seller (within the original HMIT structure). R.008816–24.

In response, on April 10, 2025, the Supporting Organizations (solely funded by Dondero) initiated legal proceedings in the Cayman Islands seeking dissolution of Holdco (the "Winding-Up Petition"). R.004203–14; R.008050–51. The Winding-Up Petition (supported by Dondero's April 9, 2025, affidavit (the "Dondero Affidavit")) claimed self-dealing and mismanagement by Patrick, and specifically described certain restructuring transactions, among other allegations against Patrick. R.004203–14; R.008042–51.

[4] Dugaboy's assertion that "*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" (Br. 15) is false. The nonprofits never "owned" the DAF's assets; they were merely possible recipients of discretionary distributions, subject to termination at any time.

On May 2, 2025, after learning that Holdco had already commenced a voluntary Cayman liquidation proceeding, the Supporting Organizations filed a Supervision Application in the Cayman Islands asking that court to appoint Joint Official Liquidators ("JOLs") and a third-party administrator to oversee Holdco's liquidation. R.004432–41. The Supervision Application stated that the Supporting Organizations had on April 25, 2025, received documents "reveal[ing]" each key step in the DAF restructuring. R.004433–35. The Cayman court granted the Supervision Application on May 6, 2025, appointing Margot MacInnis from Grant Thornton LLP to supervise Holdco's liquidation. R.004443–45. The JOLs were not appointed to serve in any capacity on behalf of any of Holdco's subsidiaries (where the DAF's assets are held), and Patrick remains in control of each of those subsidiaries.

The 9019 Settlement And Hearing

On May 19, 2025, Highland signed a settlement agreement with HMIT and immediately moved for bankruptcy court approval pursuant to Bankruptcy Rule 9019. R.001258–71. The Settlement terms were straightforward: (i) Highland transferred or sold certain assets to HMIT (including cash, a note, and Highland's long-stayed causes of action against Dondero and others) and promised HMIT certain conditional future cash payments on account of its Class 10 interest; (ii) HMIT agreed to dismiss all pending litigation against Highland with prejudice

and to provide defined "Litigation Protections" to Highland; and (iii) the parties agreed to allow HMIT's then-disputed Class 10 interest in the face amount of $336,940,230.58. R.001265–66, R.001269. Seery signed on behalf of the relevant Highland entities. R.008519–20. Patrick signed on behalf of HMIT and six affiliates. R.008518–19.

Dugaboy objected to the Settlement on various grounds but did *not* reference the restructuring transactions or challenge Patrick's authority to execute the Settlement. R.001290–97. The Dallas Foundation, one of the prior DAF discretionary beneficiaries, also objected; Dondero funded its litigation.[5] R.008133–47. That objection claimed that the Settlement was "potentially tainted by the actions of Mr. Patrick . . . [who] illicitly restructured the ownership of the HMIT Entities in a manner that seems to facilitate the diversion of millions of dollars in assets from the charitable entities that are the beneficial owners of the HMIT Entities." R.008134. The objection described Patrick's restructuring step-by-step, reiterated allegations from the Cayman proceedings, and claimed that "Patrick has acted and is acting well outside the scope of his authority." R.008135–44.

Highland, HMIT, and the objectors engaged in significant discovery. Highland responded to Dugaboy's interrogatories and produced more than 4,000

[5] The Dallas Foundation's objection was joined by Crown Global Life Insurance, Ltd., one of the entities in the original HMIT structure. R.004712–16.

pages of documents, including documents demonstrating Patrick's authority over each of the HMIT signatories. R.016470; 5/21/2026 Tr. (Seery) 33:23–34:8, 35:21–36:4. Dugaboy deposed Seery, David Klos (Highland's CFO), Patrick, and Shawn Raver (the DAF's COO and Associate General Counsel). *See* Dkts. 4243, 4244, 4245, 4259. Highland deposed The Dallas Foundation's President (Julie Diaz) and CFO (Torrey Littleton), and Dugaboy's counsel attended. *See* Dkts. 4261, 4262; R.016470. In the depositions, there was significant questioning regarding the DAF and HMIT structures and Patrick's authority. *See* R.005817–23 (Patrick Dep.); R.016215–34 (Raver Dep.); R.016304–16 (Diaz Dep.); R.016386–89, R.016427–28 (Littleton Dep.). Dugaboy never moved to compel additional discovery or deposition testimony—and never even bothered to seek discovery from HMIT. R.016468, R.016470–71.

The bankruptcy court conducted a full-day evidentiary hearing on June 25, 2025. R.000584. Shortly before the hearing, The Dallas Foundation agreed to withdraw its objection *with prejudice*. R.007928–32. Although Dugaboy had not previously challenged Patrick's authority to execute the Settlement, the bankruptcy court permitted Dugaboy (over Highland's objection) to do so at the 9019 Hearing. R.009312–24 (6/25/2025 Tr. 31:11–32:8, 33:11–43:3). The bankruptcy court admitted more than 160 exhibits and heard live testimony from four witnesses, including Patrick. R.009324–29, R.009452–75 (6/25/2025 Tr. 171:6–194:22).

On June 30, 2025, the court entered an order approving the Settlement. R.001316–19. The court found that the Settlement was fair, reasonable, and in the best interests of Highland and its stakeholders. R.001318–19. Relying on the evidence admitted at the hearing, "including the Court's assessment of the witnesses' credibility," the court found that the Settlement was negotiated "without collusion or fraud, in good faith," and at "arm's length." R.001317–18. It further found that the HMIT entities had entered into the Settlement in good faith and extended to them the good-faith-purchaser protections of 11 U.S.C. § 363(m). R.001317–19.

Texas Business Court Lawsuit

The next day, the Supporting Organizations (again, funded by Dondero) filed a lawsuit in Texas Business Court claiming that Patrick's DAF restructuring and other activities constituted self-dealing and mismanagement. R.004447–83. The 36-page petition set forth the particulars of the restructuring in extensive detail and even relied on Patrick's testimony at the 9019 Hearing to confirm that the transactions had left the DAF's prior discretionary beneficiaries with "'nothing.'" *Id.* Over the next several months, Dondero and his affiliates pursued their challenges to Patrick's actions in the Cayman Islands courts and the Texas Business Court (among other fora)—none of which involves Highland.[6]

[6] On February 10, 2026, the Cayman Islands court denied the Supporting Organizations a proprietary injunction against Patrick and his entities. R.003999– 4054. The JOLs (still funded by Dondero) have appealed that decision. R.006089–93.

Seven Months Later, Dugaboy Filed Its Rule 60(b) Motion

On February 9, 2026, Dugaboy filed its Rule 60(b) motion. R.000642–701. Dugaboy argued that the Settlement should be vacated (i) under Rule 60(b)(2) because of purportedly newly discovered evidence concerning Patrick's restructuring transactions; (ii) under Rule 60(b)(3) because "Patrick's restructuring of the DAF and Hunter Mountain" constituted "fraud"; and (iii) under principles of "equity and justice." R.000680–92. Dugaboy also asserted that Judge Jernigan, who had *voluntarily* recused herself from the Highland case in December 2025, lacked authority to approve the Settlement in June 2025, even though Dugaboy never made that argument in its objection, at the 9019 Hearing, or when appealing the 9019 Order to this Court. R.000692–99. The bankruptcy case was reassigned to the Hon. Brad W. Odell.

Six weeks after filing its motion, Dugaboy served 55 document requests on Highland and eight subpoenas on non-debtor entities and law firms; Highland moved for a protective order. R.003709–37 (Requests); R.003739–982 (Subpoenas); R.003664–700. Following argument, the bankruptcy court authorized "limited discovery." Dkt. 4566 at 2. It confined document production to two topics—Patrick's authority to sign the Settlement and the DAF restructuring—for the period from May 19, 2025, through February 8, 2026, and limited depositions by subject matter alone. *Id.* at 2–5. The court then denied Dugaboy's repeat request to expand

the time window, finding that these issues "were certainly known to Dugaboy at the time" and that discovery "could have been, but does not appear to have been, taken to the full extent" in connection with the 9019 Hearing. 4/29/2026 Tr. 36:19–37:14. Dugaboy deposed Patrick (again), and Highland deposed Dondero.

The bankruptcy court conducted a three-day evidentiary hearing starting on May 11, 2026, during which it "admitted hundreds of exhibits and heard testimony from five witnesses," R.016464, followed by closing arguments. On June 15, 2026, the bankruptcy court issued a Memorandum Opinion denying the motion in all respects. R.016459–72.

The court rejected Dugaboy's "newly discovered evidence" claim under Rule 60(b)(2), finding as fact that "Dugaboy had, or could have obtained via discovery before trial on the 9019 Motion, all the facts necessary to challenge Mr. Patrick's authority to settle on behalf of the HMIT Entities." R.016468. The opinion examined the Dondero Affidavit submitted with the Winding-Up Petition, concluding that it "summarizes Mr. Dondero's allegations against Mr. Patrick that, in [Dondero's] reading of the HMIT trust agreement," would have triggered Patrick's automatic removal "as administrator of the trust." R.016469.

Judge Odell denied Dugaboy's claim under Rule 60(b)(3), finding that Dugaboy was not prevented "'from fully and fairly presenting its case or defense'" in the 9019 Hearing. R.016467 (quoting *Longden*, 979 F.2d at 1103). The court

found that, before the 9019 Hearing, Highland produced "over 4000 pages of documents, the contents of which included organization documents for the HMIT Entities." R.016470. The court also found that officers of The Dallas Foundation were "questioned on this topic" of Patrick's authority, after which The Dallas Foundation withdrew its objection. R.016470–71. The court's finding was conclusive: "[o]verall, there is no evidence, much less clear and convincing evidence, that Highland Capital withheld evidence from Dugaboy that prevented it from fully and fairly litigating its case prior to entry of the 9019 Order." R.016471.

The court then focused on the fundamental disconnect between the restructuring transactions and Dugaboy's Rule 60(b) motion. The court explained that it made "no findings about whether those restructurings were well-intended, appropriate, or otherwise," because "vacating the 9019 Order [would] not restore the prior HMIT structure or the charitable beneficiaries' structure." R.016471. Notably, the court found that Patrick "testified that he would still have full control over HMIT's assets even if the DAF restructuring were rescinded," and that "[d]uring closing argument, counsel for Dugaboy stated that vacating the 9019 Order would not impact the DAF restructuring in any way." R.016471–72. Accordingly, the court concluded, Dugaboy's complaints regarding "[w]hatever Mr. Patrick did or did not

do with his authority over HMIT assets and the charitable beneficiaries' structure" should be directed at other fora and were "not for this Court to decide." R.016472.[7]

SUMMARY OF ARGUMENT

I. The court did not create a "categor[ical]" rule refusing to consider a settlement counterparty's conduct in assessing fraud under Rule 60(b)(3). Rather, the court correctly held that the fraud "'complained of must be such as to prevent the losing party from fully and fairly presenting its case.'" R.016467 (quoting *Longden*, 979 F.2d at 1103). The court further recognized, correctly, that the fraud of which Dugaboy complains here—restructuring of the HMIT and DAF entities—did not enable or otherwise affect the Settlement and that Patrick was undoubtedly authorized to execute the Settlement without regard to the restructuring. Dugaboy's claim that Patrick automatically lost authority to act for HMIT is forfeited twice over and dead wrong.

II. The court applied the correct Rule 9019 standard. Dugaboy's request to adopt a higher standard for settlements negotiated by court-appointed professionals is forfeited twice over and, in any event, unprecedented and ill-advised.

[7] Dugaboy's motion generally invoked notions of "equity" and referred to Rule 60(b)(6). The bankruptcy court held that "Dugaboy failed to articulate a 'mutually exclusive reason'" under Rule 60(b)(6) distinct from its 60(b)(2) or 60(b)(3) theories, R.016472, which Dugaboy (wisely) has not challenged on appeal.

III. The court did not abuse its discretion in finding that Dugaboy failed to adduce "newly discovered evidence" under Rule 60(b)(2). The evidence overwhelmingly shows that Dugaboy knew about Patrick's restructuring well before the Settlement. For example, the Dondero Affidavit described the restructuring, and the Dondero-backed Supervision Application detailed it step-by-step. Discovery and the 9019 Hearing then further examined these issues, followed by still more Dondero-backed litigation. The only information learned later was, as the court recognized, mere detail which Dugaboy could have, but failed to, seek in discovery.

IV. The court did not abuse its discretion in rejecting Dugaboy's "fraud" argument under Rule 60(b)(3). It did not refuse to consider "extrinsic fraud." Dugaboy's complaints about Patrick's June 2025 deposition ignore the reams of evidence from which Dugaboy was able to press its belated objection. Dugaboy's claim that Highland obfuscated Patrick's restructuring is demonstrably false.

V. Dugaboy never raised recusal in the 9019 Hearing, and Section 455(a) recusal arguments are subject to a timeliness requirement. Moreover, even after raising recusal in its Rule 60(b) motion, Dugaboy developed none of the facts necessary for the court to consider it. In any event, the substance of Dugaboy's argument relies on a gross mischaracterization of the Fifth Circuit's prior statements on the issue.

VI. Dugaboy's *Stern v. Marshall* argument is nonsense—Rule 9019 is wheelhouse Article I material. The unrelated Article II case Dugaboy cites adds nothing, and Dugaboy has waived any conceivable *Stern* argument.

VII. The court did not abuse its discretion in limiting the scope of Dugaboy's Rule 60(b) discovery to a date range that did not duplicate discovery Dugaboy could have obtained in the 9019 Hearing. Likewise, the court correctly enforced Local Rules and Chambers Rules requiring timely exchange of witness lists at least three days before trial, and the Court properly admitted textbook party admissions.

ARGUMENT

I. THE BANKRUPTCY COURT CORRECTLY HELD THAT FRAUD ALLEGED UNDER RULE 60(b)(3) MUST "PREVENT THE LOSING PARTY FROM FULLY AND FAIRLY PRESENTING ITS CASE"

Dugaboy claims the bankruptcy court created a "categor[ical]" rule that "the fraud or misconduct of a counterparty to a debtor settlement is not pertinent to whether it should be approved." (Br. 25). The court did no such thing. Rather, the court correctly observed that Rule 60(b)(3) concerns "fraud" that affects the underlying judicial proceeding in a particular manner, namely "'the conduct complained of must be such as to prevent the losing party from fully and fairly presenting its case or defense.'" R.016467 (quoting *Longden*, 979 F.2d at 1103). Dugaboy does not even mention this portion of the court's opinion or *Longden*, much less explain why that long-settled rule does not govern this case.

Instead, Dugaboy misquotes a passage from the decision below, claiming that "[t]he bankruptcy court determined that Mr. Patrick's misconduct, as 'merely a signatory for a counterparty to a settlement agreement[,]' was not pertinent to settlement approval." (Br. 25 (quoting R.016469 (omission of internal quotation marks Dugaboy's))). Dugaboy omits internal quotation marks to obscure the fact that Judge Odell was merely quoting how "Judge Jernigan [had] characterized the challenges related to Mark Patrick's authority." R.016469.

Judge Odell correctly determined (as had Judge Jernigan) that Patrick's alleged misconduct in the restructuring transactions had no effect on his authority to enter into the Settlement. Dugaboy effectively concurred, as its counsel conceded in closing argument, that unwinding the Settlement would not affect the restructuring. R.016472. Accordingly, Judge Odell was correct in concluding that "[w]hatever Mr. Patrick did or did not do with his authority over HMIT assets and the charitable beneficiaries' structure, [was] not for [Judge Odell] to decide," R.016472, because Rule 60(b)(3) addresses "fraud" that prevents a party from presenting its case in court. The bankruptcy court recognized this fundamental disconnect in Dugaboy's reasoning, because Dugaboy could not (and cannot) explain how Patrick's

restructuring activities prevented Dugaboy from fairly challenging the merits of whether the Settlement satisfied Rule 9019.[8]

Dugaboy claims that "[b]ankruptcy courts, as courts of equity, have a duty to ensure that their proceedings are conducted fairly and free of fraud and misconduct." (Br. 26 (citing cases)). On that point, Highland violently agrees. Yet Dugaboy overlooks that the 9019 Hearing *was* conducted free of fraud and misconduct, and Dugaboy ignores that the restructuring transactions did not grant Patrick any authority over HMIT—including the authority to enter into the Settlement—that he did not already have. Dugaboy cites another string of cases for the proposition that a court should not permit a non-debtor to commit misconduct in a bankruptcy court. (Br. 27 (citing cases)). Here again, Highland agrees, and the bankruptcy court never suggested otherwise. Rather, it held that the "fraud" that Rule 60(b)(3) addresses must actually affect the bankruptcy proceeding by preventing the objecting party from presenting its case. R.016471. That is the correct standard.

Finally, Dugaboy cursorily adds the claim that "[t]he Hunter Mountain Investment Trust Agreement automatically stripped its administrator of authority if he committed various forms of misconduct, including breaches of fiduciary duty, in

[8] The testimony of Dugaboy's witness, Margot MacInnis, at the Rule 60(b) Hearing vividly highlighted that disconnect. She admitted that, even though she was Holdco's JOL, she did not bother to attend the 9019 Hearing; has made no effort to obtain the evidence adduced during that hearing; had no view (a year later) as to whether the Settlement was "good or bad" for Holdco; and never mentioned HMIT in her direct testimony. 5/11/2026 Tr. at 157:16-158:23, 194:21-196:3.

any capacity." (Br. 28–29). But Dugaboy leaves this assertion unexplained, instead citing a five-page range of the trust agreement. (Br. 28–29). Where, as here, a party "asserts an argument on appeal, but fails to adequately brief it, [it] is deemed to have waived it." *Willis v. Cleco Corp.*, 749 F.3d 314, 319 (5th Cir. 2014) (quoting *United States v. Scroggins*, 599 F.3d 433, 446 (5th Cir. 2010)). As in *Scroggins*, this argument appears merely "as an afterthought," and "the body of [Dugaboy's] brief does not discuss it in any depth." 599 F.3d at 447. Rather, "[t]he brief merely mentions it in conclusory sentences tacked to the end of paragraphs challenging other aspects" of the bankruptcy court's decision. *Id.*

Moreover, Dugaboy never raised this "automatic-removal" argument in the 9019 Hearing, despite knowing of Patrick's purported fiduciary breaches.[9] For example, the Dondero Affidavit claims that Patrick engaged in self-dealing and a litany of unauthorized and improper transactions. R.008049. As the bankruptcy court correctly found, this affidavit "summarizes Mr. Dondero's allegations against Mr. Patrick that, in his reading of the HMIT trust agreement, automatically removed Mr. Patrick as administrator of the trust." R.016469; *see also infra* Part III.B-D (discussing a host of additional such evidence). And Dugaboy indisputably had the

[9] In fact, Dugaboy raised the automatic-removal argument for the first time when it filed its reply brief on the eve of the Rule 60(b) Hearing.

HMIT trust agreement in the 9019 Hearing and could have presented this argument in timely fashion (if only it had dreamt it up by then). R.006095.

In any event, by its plain terms, the HMIT trust agreement does not work the way Dugaboy now imagines, such that Patrick's authority over HMIT spontaneously (and retroactively) evaporates upon the assertion of misconduct by a third party. Dugaboy is presumably attempting to invoke the agreement's definition of "Honis Cause," which includes certain misconduct by "[John] Honis, in any capacity, . . . that is injurious to any of the Applicable Entities." R.008484. Critically, however, the definition further provides that "[a]ny determination of whether conduct constitutes Honis Cause pursuant to this Agreement ***shall be made in the reasonable discretion of the Partnership***," which in context refers to "Highland Capital Management, L.P." *Id.* (emphasis added). The agreement provides that upon the occurrence of Honis Cause, "the Administrator shall immediately be removed without any action by the Delaware Trustee or any other party." R.008484, R.008489. Dugaboy presumably believes Honis Cause also applies to Patrick.

Dugaboy's argument fails at step one, because Highland has never "determine[d]" that Patrick's conduct triggered this provision. Dugaboy's position relies only on the removal provision, while ignoring the Highland-determination requirement. *But see New Castle Cnty., Del. v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 174 F.3d 338, 349 (3d Cir. 1999) ("'[A] single clause or paragraph

of a contract cannot be read in isolation, but must be read in context, and every portion of the contract deserves consideration.'" (quoting *Cheseroni v. Nationwide Mut. Ins. Co.*, 402 A.2d 1215, 1217 (Del. Super. Ct. 1979))). Moreover, the Highland-determination requirement works in harmony with the agreement's declaration that "[n]o one dealing with the Administrator need inquire concerning the validity of anything the Administrator *purports* to do or see to the application of any money paid upon the Administrator's order." R.008489 (emphasis added). And the language on which Dugaboy relies, which uses the passive phrase "shall immediately be removed," contemplates that someone (*i.e.*, Highland) must act and states only that no action is required "by the Delaware Trustee or any other *party*." R.008489, R.008484 (emphasis added). Highland is neither the Delaware Trustee nor a "party" to the agreement.[10]

Last but not least, Dugaboy's belated "automatic-removal" argument is directly contradicted by its repeated ratification of Patrick's authority. The court admitted eight agreements into evidence in which Dondero, Dugaboy, the JOLs, and other Dondero-affiliated entities recognized Patrick's authority to act on behalf of HMIT and DAF entities—despite knowing of Patrick's alleged self-dealing and breaches of fiduciary duties and even after learning of the restructuring transactions.

[10] There are still more problems belying Dugaboy's argument that space does not permit us to address, which is still further reason why inadequately briefed arguments are deemed forfeited.

See R.005009–12, R.007923–26 (1/10/2025); R.007928–38 (6/27/2025); R.007940–43 (7/11/2025); R.007945–60 (7/31/2025); R.007967–85 (9/30/2025); R.007987–89 (12/3/2025); R.007991–96 (12/8/2025); *see also* 5/12/2026 Tr. 118–28 (Patrick testifying he signed each agreement or directed counsel to sign it, and that neither Dondero nor anyone else ever challenged his authority to do so).

II. THE BANKRUPTCY COURT APPLIED THE CORRECT STANDARD TO THE 9019 SETTLEMENT

Dugaboy claims that 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." (Br. 29). Again, the bankruptcy court did no such thing. Tellingly, this entire section of Dugaboy's brief lacks a single quotation from the decision below.

Dugaboy presumably takes issue with the bankruptcy court's statements that it declined "to reassess whether the settlement was the product of arm's-length, good faith negotiations" and that it was "not for this Court to decide" Patrick's motivations. R.016472. Those conclusions confirmed the findings at the 9019 Hearing and came on the heels of the court's findings that—as Patrick and Dugaboy's trial counsel agreed—"vacating the 9019 Order will not restore the prior HMIT structure or the charitable beneficiaries' structure." R.016471. Thus, read with even the slightest attention to context, the court's statements merely recognize

that Dugaboy's motion suffers from a fatal disconnect between Patrick's alleged misconduct and the validity of the Settlement for purposes of the Rule 60(b) motion.

Dugaboy then pivots to an admixture of arguing that a heightened standard should apply to 9019 settlements proposed by "court-appointed bankruptcy professionals" and leveling *ad hominem* attacks against those professionals. (Br. 29–32). The latter merits no response. As for the heightened-standard argument, it is forfeited twice over: Dugaboy never advanced that position in the 9019 Hearing or in the Rule 60(b) Hearing.

In any event, Dugaboy cites no case applying a different standard to settlements proposed by court-appointed professionals, presumably because no court has ever done so. Moreover, Dugaboy's argument rests on the false premise that the professionals here lacked appropriate duties to maximize the value of the estate assets. *See, e.g.*, Dkt. 1811 Ex. R (Claimant Trust Agreement) at §2.3(b)(i) (as modified by Dkt. 1875-4). Likewise, Dugaboy's claim that the interests of "remaining equity" were not adequately considered ignores the fact that Highland's negotiating counterparty, HMIT, *was* the holder of 99.5% of Highland's prepetition equity. Dugaboy's real complaint is with the Chapter 11 Plan itself, but that was confirmed and finalized on appeal long ago.

III. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN FINDING THAT DUGABOY LACKED "NEWLY DISCOVERED" EVIDENCE UNDER FRCP 60(b)(2)

Dugaboy claims that, after the 9019 Hearing, it obtained new evidence "that Mr. Patrick had secretly restructured two charitable entities to steal the equity stake in Highland he was purporting to represent in the settlement [*i.e.*, HMIT] and $270 million in other assets from established charities [*i.e.*, the DAF]." (Br. 33). Dugaboy further claims these facts were not discovered until well after the JOLs "stepped into the shoes" of Holdco when the Cayman court granted the Supervision Application. (Br. 18–19, 32–35, 39). The bankruptcy court did not abuse its discretion in rejecting Dugaboy's assertions; indeed, given the overwhelming evidence demonstrating that Dugaboy/Dondero[11] knew the essential facts of Patrick's activities, it would have been an abuse of discretion to conclude otherwise.

A. The Dondero Affidavit

First, as noted above, the Dondero Affidavit was filed more than two months before the 9019 Hearing and averred that Patrick had sold the entire Hunter Mountain position for $1 million, that "no valuation . . . that [he] can imagine" could support that price, and that the sale "indicates a non-market, non-fiduciary reason." R.008048-49. Moreover, the Dondero Affidavit describes that transaction as just one

[11] Dugaboy designated Dondero as its agent "for all purposes relating to" litigation concerning Patrick's allegedly illicit activities, including the 9019 Hearing, the Cayman litigation, and its Rule 60(b) motion. R.008462. There is thus no distinction between Dondero's and Dugaboy's knowledge.

"example" of "repeated reports and evidence of Mr[.] Patrick causing certain DAF entities to liquidate their assets, some at below-market value." R.008048. These allegations lie at the core of Dugaboy's purportedly "newly discovered" evidence that Patrick was attempting to "steal the equity stake in Highland . . . and $270 million in other assets from established charities" (Br. 33). Dugaboy downplays the Dondero Affidavit as merely "identif[ying] five discrete, lesser compliance matters, none of which revealed the massive theft the Cayman Liquidators later uncovered." (Br. 36). Not so.

For starters, Dondero deemed all of these allegations sufficiently serious to marshal them in support of the Supporting Organizations' April 2025 request for judicial liquidation of Holdco. As explained above (*supra* Part I), moreover, all of the allegations would have put Dugaboy on notice to raise its (flawed) automatic-removal theory under the HMIT trust agreement. Dugaboy attempts to downplay the Dondero Affidavit's concerns about "increased expenses" (Br. 37), but the Dondero Affidavit says explicitly that the increased expenses "reinforced my concern that Mr[.] Patrick is using the Control Position for his own enrichment rather than to benefit the Supporting Organizations and the causes they support." R.008047. Indeed, as Highland's counsel accurately observed, Dondero "alleges in his April declaration that Mr. Patrick began breaching his fiduciary duties as early as June 2023." 5/21/2026 Tr. 227:19–21. Even if it were the only evidence in Dugaboy's

possession before the Settlement, the Dondero Affidavit was more than enough. But there is so much more, and this Court may affirm on any basis supported by the record. *See United States v. Garrett*, 15 F.4th 335, 340 (5th Cir. 2021).

B. The Supervision Application

On May 2, 2025, the Supporting Organizations (of which Dondero was President, board member, and sole funder) filed their Supervision Application in the Cayman Islands. R.004432-41. That document eviscerates Dugaboy's claim that Patrick had "secretly restructured two charitable entities" and that Dugaboy could not possibly have understood those maneuvers in time (Br. 33).

For example, Dugaboy's claim that it did not know Patrick had "formed 'DFW Charitable Foundation,' headquartered in his basement," (Br. 33) to become the DAF's new primary discretionary beneficiary is directly contradicted by the Supervision Application:

> On 7 February 2025, Holdco allotted 318 participating shares to an entity named 'DFW Charitable Foundation' (DFW) – the effect being the substantial dilution of the Supporting Organisations' interest in the Company, from a cumulative holding of 100% of the Participation Shares to 48.9%. The Petitioners have since discovered that DFW is a Delaware company incorporated on 9 December 2024, registered to Mark Patrick's home address and Mark Patrick being the sole member. Mark Patrick is a director of and holds the Management Shares in HoldCo. DFW was purportedly granted charitable status by the State of Delaware on 7 February 2025, the same day it was allotted 318 participating shares in the Company.

R.008055. "Participation Shares" allow holders to receive the (purely discretionary) economic distributions from the DAF; "Management Shares" allow holders to appoint the directors who have sole control of whether, when, and in what amount to make distributions (and whether to change or eliminate holders of Participation Shares). R.004970–71. Thus, the paragraph above conclusively demonstrates Dondero's (and therefore Dugaboy's) awareness that the first step in the DAF restructuring was to establish DFW Charitable Foundation, which they knew Patrick created and operated from his home, as the DAF's primary beneficiary.

The Supervision Application then explains that, in the second step, Patrick had fully redeemed the Supporting Organizations' remaining discretionary interest. It explains that Patrick had caused a new "entity called CDMCFAD, LLC"—which Dugaboy now claims to be part of an impenetrable "alphabet soup" (Br. 14)—to become the "sole investment" of Holdco. R.008056. It further complains that the Supporting Organizations' interest in that entity had been "redeemed on 27 March 2025 and, on 2 April 2025, the proceeds available for distribution from this redemption were distributed in the amount of US$1,612,192" to the Supporting Organizations. *Id*. And it avers that as of "2 April 2025, [Holdco] has no assets." R.008056; *see also* 5/11/2026 Tr. 261:15–262:13. At the Rule 60(b) Hearing, Dugaboy's witness, Lucy Bannon, vice president of the Supporting Organizations (and head of Public Relations for Dondero's current asset-management business),

conceded that "the supporting organizations were fully aware as of May 2nd, 2025" that CDMCFAD had been inserted into the DAF structure, and that they "were aware of the redemption." 5/11/2026 Tr. 261:15–262:13.

C. The 9019 Motion, Discovery, And Hearing

The motion to approve the Settlement was filed on May 19, 2025. As explained above (*supra* pp. 15–16), Dugaboy objected on grounds unrelated to Patrick's authority, but The Dallas Foundation (funded by Dondero) claimed that Patrick had "illicitly restructured the ownership of the HMIT Entities in a manner that seems to facilitate the diversion of millions of dollars in assets from the charitable entities that are the beneficial owners of the HMIT Entities." R.008134. The objection recounted the details presented in the Supervision Application, including that Patrick had "formed in December 2024" a charity "based out of Mr. Patrick's home" (which was then issued Participation Shares); that Patrick had "caused the formation of another new entity, CDMCFAD, LLC" to be "secretly inserted into the charitable organization structure"; how the foundations' beneficial interest in Charitable DAF Fund, LP was transferred to CDMCFAD; and how, "[o]n March 27, 2025, the Fund's interest in CDMCFAD was purportedly redeemed for proceeds totaling $1,612,192.00." R.004711–12. The objection also documented the surge in directors' fees, reaching $2.25 million in the first half of 2024. R.004710. So, the core facts of the "fraudulent restructuring" that Dugaboy now says were

unknowable until the JOLs' July and December 2025 filings, (Br. 18–19, 33–34), were disclosed by Dondero-affiliated entities weeks before the 9019 Hearing.

Every objector, including Dugaboy, exercised their discovery rights. *See* Fed. R. Bankr. P. 9014(c). Highland responded to Dugaboy's interrogatories and produced voluminous documents, including the HMIT signatories' organizational documents and all of Highland's communications with HMIT leading up to the Settlement. R.016470; 5/21/2026 Tr. (Seery) 33:23–34:8, 35:21–36:4. Dugaboy never challenged Highland's discovery responses.

Notably, Highland's production included the LLC Agreement for HMIT's sole beneficiary, Beacon Mountain, LLC, which had been amended and restated on February 12, 2025, as part of Patrick's restructuring, because a DAF subsidiary called CLO Holdco, LLC had become Beacon Mountain's sole "Member." This is all laid out on the first page of the document, along with an explicit recital explaining that the new "Member acquired all the membership interests in the Company from Rand PE Fund I, L.P., as of the Effective Date"—*i.e.*, February 12, 2025. R.006132, R.006138. ***This document was admitted into evidence at the 9019 Hearing without objection.***

Dugaboy had ample opportunity to obtain additional information on these issues. Dugaboy deposed Seery, Klos, Raver, and Patrick. Raver testified that the ownership of Charitable DAF Fund, LP had "changed," that CDMCFAD "now sits

above" it, that Beacon Mountain is owned by CLO Holdco, LLC, and that CDMCFAD is owned by DFW Charitable Foundation. Raver 6/20/2025 Dep. 11:6–13:2, 22:6–23:2; R.005151–53, R.005162–63. Dugaboy then deposed Patrick, who confirmed that Beacon Mountain was owned by "[a]n entity called CLO HOLD CO LLC," which he understood was in turn owned by CLO Holdco, Ltd. Patrick Dep. 6/23/2025 Tr. 10:25–11:7; R.005820–21. Dugaboy now complains about Patrick's deposition answers, but Dugaboy cannot credibly deny that it fully understood the restructuring transactions and their consequences. In any event, Dugaboy never served discovery on the HMIT entities and never moved to compel or otherwise objected. R.016470.

Highland deposed The Dallas Foundation's officers, who were directly "questioned on th[e] topic" of Patrick's authority. 5/21/2026 Tr. (Seery) 34:8–11; R.016470–71. Dugaboy's counsel attended those depositions. The Dallas Foundation ultimately agreed to withdraw its objection *with prejudice* before the 9019 Hearing commenced.

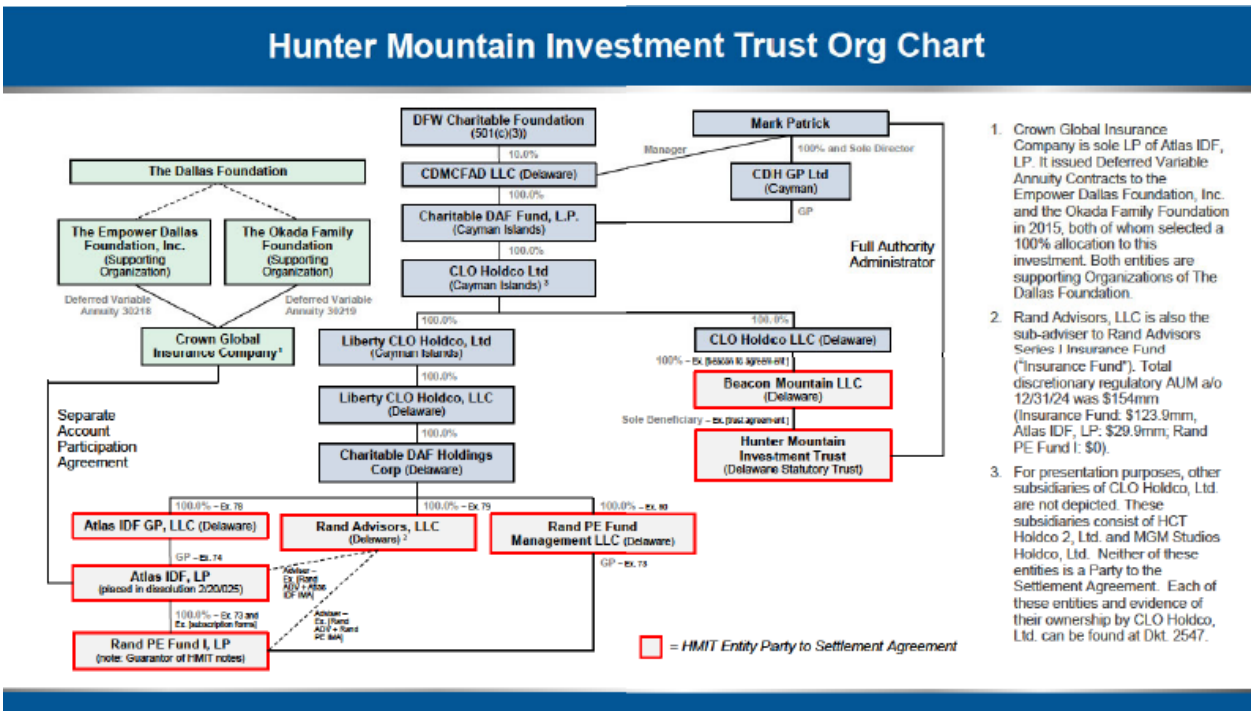
In its written objection, Dugaboy did not challenge Patrick's authority or otherwise complain about the DAF restructuring transactions, but the bankruptcy court nonetheless permitted Dugaboy to make that argument at the 9019 Hearing over Highland's objections. And the subject was aired at length, including through

the testimony of multiple witnesses[12] and the introduction of scores of exhibits, including the previously produced corporate documents demonstrating Patrick's unquestioned authority to sign for the HMIT entities.[13] Patrick himself testified to each link in that chain. R.009454-55 (6/25/2025 Tr. 173:22–174:7). He also explicitly testified that the entity through which the prior discretionary beneficiaries held their interests now "owns nothing." R.009466 (6/25/2025 Tr. 185:22–25).

It is particularly galling for Dugaboy to suggest that Highland somehow contributed to Dugaboy's (feigned) confusion (*see infra* Part IV.C). During opening statements at the 9019 Hearing, Highland's counsel literally displayed and walked through a color-coded slide detailing the post-reorganized DAF structure, including the move of the HMIT interest:

[12] *See, e.g.*, R.009378–81 (6/25/2025 Tr. (Seery) 97:12–100:13); R.009452–75 (*id.* (Patrick) 171:7–194:22); R.009476–511 (*id.* (Dondero) 195:12–230:9).

[13] *See* R.009321–22 (6/25/2025 Tr. 40:7–41:10 (Highland counsel identifying "34 documents in evidence" establishing Patrick's authority, to which HMIT stipulated)); R.009327–28 (*id.* 46:6–47:3 (admitting Exs. 64–69 over Dugaboy's relevance objection and admitting Exs. 1–9, 11–56, 58–123, 126)); R.009378–79 (*id.* 97:13–98:23 (Seery identifying Exs. 70–104)).



R.005198; R.009341–2 (6/25/2025 Tr. 60:25–61:19). Dugaboy (and everyone else in court) knew full well how Patrick had restructured these entities.

D. The Texas Business Court Lawsuit

The bankruptcy court approved the Settlement on June 30, 2025, and the very next day Dondero's Supporting Organizations filed a lawsuit in the Texas Business Court against Patrick seeking appointment of a receiver. Demonstrating yet again that Patrick's alleged misconduct had been on full display leading up to and during the 9019 Hearing, this new lawsuit asserted that "Mark Patrick, *through a host of corporate manipulations, took over $270 million in cash* and assets that supported some of the most important community-based charities in the country." R.004447–48 (emphasis added). The very next sentence relied on "Patrick's own testimony from just last Wednesday, June 25th," at the 9019 Hearing, at which he confirmed

that "the Supporting Organizations, plaintiffs here, were left with 'nothing.'" *Id.* (citing 6/25/2025 Tr. 185:22–25).

The complaint then described the mechanics: "Through the mechanism of Charitable DAF GP, LLC (organized in Delaware) and later via a secretly incorporated entity, CDH GP, Ltd., Mark Patrick held the sole control position of what was a $270 million charitable fund (Charitable DAF Fund, LP) . . . . He did so in order to redirect the fund's beneficial ownership to a brand-new sham charitable organization controlled by him, DFW Charitable Foundation." *Id.* at ¶ 1.2; R.004448. The petition then mapped out those transactions step by step over four pages. *Id.* at ¶¶ 5.41–5.50; R.004462–65. The lawsuit was supported by a new Dondero affidavit, which largely tracked the April 2025 Dondero Affidavit (*see* R.004749), and expressly acknowledged that the Supporting Organizations' Cayman counsel had "alleged essentially the same facts" before the Grand Court. R.004466 (Highland Ex. 62); R.004686–87 (Highland Ex. 61; Dkt. 4521, Ex. H-6).

Accordingly, every transaction in Dugaboy's catalog of supposedly "newly discovered" evidence (Br. 33–34) was known within fourteen days of the bankruptcy court's order approving the Settlement.[14] The only data points that the JOLs (arguably) learned later are exactly how much compensation Patrick received and

[14] While Dugaboy already knew all the relevant facts within 14 days, the correct time period is 28 days because Dugaboy moved under Bankruptcy Rule 9024, which adopted the 28-day period from FRCP 60—not Bankruptcy Rule 9023, which has a 14-day period.

the content of specific emails he exchanged with counsel leading up to the restructuring. But as the bankruptcy court correctly found, those facts go only to "the magnitude and effect" of known conduct and are "not newly discovered evidence." R.016469. In any event, Dugaboy could have obtained this additional information through the exercise of "reasonable diligence" during the Rule 9019 discovery process. Fed. R. Civ. P. 60(b)(2). But Dugaboy did not even serve discovery requests on the HMIT entities, nor did it bother to make any inquiry concerning Patrick's compensation. Deliberate dereliction is not diligence.[15]

IV. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN HOLDING THAT DUGABOY FAILED TO DEMONSTRATE ANY RELEVANT OR COGNIZABLE FRAUD UNDER RULE 60(b)(3)

A. The Bankruptcy Court Did Not Refuse To Consider Evidence Of "Extrinsic" Fraud

Essentially rehashing a prior argument, Dugaboy claims that the bankruptcy court "adopt[ed] the incorrect view that only 'intrinsic' fraud within the judicial process itself counts." Br. 40. Not so. Yet again, the citation Dugaboy offers—R.016469—has no accompanying quotation from the opinion, because the court said

[15] Dugaboy cites decisions holding that knowledge of misconduct "confined to a different entity or type of wrongdoing" does not provide inquiry notice of a "qualitatively different, deliberately concealed fraud." Br. 35 (citing *Town N. Bank N.A. v. Shay Fin. Servs., Inc.*, 2014 WL 4851558, at *21 (N.D. Tex. Sep. 30, 2014); *Kitchell v. Aspen Expl., Inc.*, 562 F. Supp. 2d 843, 849–50 (E.D. Tex. 2007); *In re Enron Corp.*, 2005 WL 1637912, at *4 (S.D. Tex. June 14, 2005); *Sudo Props., Inc. v. Terrebonne Par. Consol. Gov't*, 503 F.3d 371, 374–75 (5th Cir. 2007)). Those cases, however, concern when a fraud plaintiff's limitations period began, not whether a Rule 60(b)(2) movant exercised diligence. In any event, here Dugaboy was aware of the steps of the alleged scheme itself, not something "qualitatively different."

no such thing. And, as with the prior iteration of this argument, the cited page addresses only Dugaboy's "newly discovered evidence" claim under FRCP 60(b)(2), not its fraud claim under FRCP 60(b)(3). In fact, as explained above, the court applied the correct standard that the fraud—whether it occurred inside the court (intrinsic) or outside the court (extrinsic)—must have affected the actual judicial proceeding in such a way as "'to prevent the losing party from fully and fairly presenting its case or defense.'" R.016467 (quoting *Longden*, 979 F.2d at 1103).

B. Patrick's Purported "Deceptive Conduct" Did Not Prevent Dugaboy From Presenting Its Case At The 9019 Hearing

Dugaboy complains that Patrick's "asserted lack of recollection" about the revised ownership structure during his "June 2025" deposition warranted relief under Rule 60(b)(3) (Br. 42). The bankruptcy court did not abuse its discretion in rejecting this argument. Again, the question is not whether Patrick answered each deposition question to Dugaboy's satisfaction, but whether Dugaboy was prevented from "fully and fairly presenting its case or defense" at the 9019 Hearing. *Longden*, 979 F.2d at 1103. And as exhaustively detailed above (*supra* Parts III.A–C), Dugaboy had detailed evidence of the restructuring's particulars well in advance of the 9019 Hearing, regardless of how Patrick responded to any particular question in his deposition. Moreover, during the 9019 Hearing, the bankruptcy court specifically admonished Patrick to provide direct and complete answers, and Patrick complied. R.009463–4 (6/25/2025 Tr. 182:7–183:2). And there was ample documentary

evidence and witness testimony presented at the 9019 Hearing detailing the restructuring. Dugaboy was more than able to present its case.

C. There Is Zero Evidence Of "Discovery Misconduct" By Highland

Judge Odell correctly found that "there is no evidence, much less clear and convincing evidence, that Highland Capital withheld evidence from Dugaboy that prevented it from fully and fairly litigating its case prior to entry of the 9019 Order." R.016471. Dugaboy cannot possibly show that this factual finding is clearly erroneous. Indeed, that finding is demonstrably correct, and Dugaboy's counsel should carefully reexamine this spurious accusation.

Dugaboy claims that, "[w]hen 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." (Br. 42–43). Wrong. As described above (*see supra* Part III.C), among the reams of documents Highland produced in the 9019 Hearing discovery were all of the documents showing Patrick's authority over each of the HMIT signatories as of May 19, 2025, when the Settlement Agreement was signed. Those documents included the Second Amended and Restated Limited Liability Company Agreement of Beacon Mountain, LLC (HMIT's sole beneficiary). That agreement expressly shows the *revised* HMIT structure, "dated as of the 12th day of February, 2025" and

specifically recites that the sole membership interest, "CLO Holdco, LLC," "acquired all the membership interests" on February 12, 2025. R.006132. The documents did not convey a "false impression"; they accurately stated the facts, if only Dugaboy bothered to read them.

Dugaboy claims that Seery testified at the Rule 60(b) Hearing that "he reviewed only the historical organizational documents identified in Highland's June 24, 2025, exhibit list." (Br. 43). This one is wrong twice over. First, Seery *did* state that prior to signing the Settlement he "looked at all 34 of those documents" to ensure that Patrick had authority for all HMIT signatories. 5/21/2026 Tr. 47:20–48:5. But *nowhere* does Seery state that those were "historical"—*i.e.*, pre-restructuring—documents. To the contrary, Dugaboy's counsel elicited testimony *confirming* that Seery specifically reviewed Exhibit 95, which is the February 12, 2025, Beacon Mountain, LLC Agreement discussed above that describes the *revised* HMIT structure. *Id.* 50:20–24. Second, Seery *did not* testify that these were the "only" documents he reviewed, despite counsel's repeated attempts to elicit such a statement. *See, e.g.*, *id.* 47:24 ("I believe that's *most* of them, if not all."); 48:3–5 ("I don't know if that's every document I looked at, but I looked at all 34 of those documents."). In any event, Seery testified unequivocally that he reviewed documents sufficient to confirm that Patrick had authority on behalf of each HMIT

signatory when he executed the Settlement on May 19, 2025. *Id.* 29:12–30:1, 42:9–18, 43:4–44:2, 44:21–45:1, 53:10–13.

Dugaboy's suggestion that "[b]oth Highland and Mr. Patrick" misled Dugaboy 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" (Br. 43) is absurd. Dugaboy never explains why additional entities were needed as signatories—HMIT held a Class 10 interest under the Plan and was an active litigant. Moreover, Dugaboy's theory makes no sense in light of the overwhelming evidence detailed above demonstrating that Dugaboy knew full well about the restructuring transactions and that Patrick had full authority over each of the HMIT signatories. *See supra* Parts I, III.

V. THE BANKRUPTCY COURT PROPERLY REFUSED TO CONSIDER DUGABOY'S (BELATED) RECUSAL CHALLENGE

Dugaboy claims that Judge Jernigan should have recused herself from the case *sua sponte* rather than consider the 9019 Motion. This argument is forfeited twice over and devoid of any evidentiary support.

A. Forfeiture #1: Dugaboy Failed To Argue Recusal In Connection With The Rule 9019 Motion

The centerpiece of Dugaboy's recusal argument is an April 16, 2025, decision issued by the Fifth Circuit reaffirming the *denial* of Dugaboy's mandamus petition seeking recusal. Dugaboy (selectively and misleadingly) quotes a line from that

decision that ends with "a strong argument could be made that [Judge Jernigan] had a duty to recuse." (Br. 20 (quoting *Dondero v. Jernigan*, 2025 WL 1122466, at *7 (5th Cir. Apr. 16, 2025))). We explain below how Dugaboy mischaracterizes that decision (*see infra* Part V.C). But for present purposes what matters is that a full month before the 9019 Motion was filed, Dugaboy had the supposed "determination" on which it now relies to argue that Judge Jernigan should have recused *sua sponte* under 28 U.S.C. § 455(a).

Nevertheless, Dugaboy sat on its hands and never moved or argued for recusal in connection with the 9019 Hearing. Nor did anyone else. It is settled law in the Fifth Circuit that "a timeliness requirement applies to raising § 455(a) disqualification." *Travelers Ins. Co. v. Liljeberg Enters., Inc.*, 38 F.3d 1404, 1410 (5th Cir. 1994). Accordingly, "one seeking disqualification must do so at the earliest moment after knowledge of the facts demonstrating the basis for such disqualification." *Id.* Dugaboy not only knew about Judge Jernigan's books at the time of the 9019 Hearing, it had the Fifth Circuit's decision and chose not to argue or even mention recusal. That is classic forfeiture and, unlike Section 455***(b)*** disqualification, Section 455***(a)*** disqualification arguments are waivable. *See* 28 U.S.C. § 455(e). For obvious reasons, courts do not permit a party to "conduct a full

trial, all the while knowing that [it] might seek to invalidate it" if it does not like the outcome. *United States v. York*, 888 F.2d 1050, 1056 (5th Cir. 1989).[16]

B. Forfeiture #2: Dugaboy Failed To Pursue Its Fact-Dependent Recusal Theory During The Rule 60(b) Hearing

Even if Dugaboy could have raised recusal in its Rule 60(b) motion, Judge Odell correctly held that Dugaboy abandoned that argument by not pursuing it at trial. *See* R.016463. Dugaboy's recusal argument was based on allegations about purported factual similarities between Dondero and a fictional character in one of two books authored by Judge Jernigan. *See* R.000692-96. That theory rests on two factual predicates: (1) What do the books actually say? And (2) what characteristics do Dondero, his business activities, etc. actually exhibit and share with the content of those books? Only after establishing both of those factual predicates could a court determine whether Judge Jernigan's "impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

Dugaboy offered zero evidence of either factual predicate during the Rule 60(b) hearing. Indeed, Dugaboy did not move a single recusal-related document into evidence, including the books, and none was admitted; Dugaboy merely put hard copies of the books in the Appendix "attached" to its Rule 60(b) motion, R.001827

[16] In another recent Highland appeal, this Court rejected a parallel attempt by Dugaboy to evade the consequences of its failure to timely raise recusal. *See* Case No. 3:25-cv-02579-B. Permitting Dugaboy to resurrect a clearly forfeited recusal argument in this Rule 60(b) proceeding would tacitly reverse Judge Boyle's well-reasoned decision.

(Ex. 53); R.001828 (Ex. 54), along with 52 other documents, R.000711–826 (Ex. 1–52). As the bankruptcy court cautioned when deciding to include the books in the record on appeal: "The Court did not read the novels or analyze the numerous exhibits" comprising the Appendix. Dkt. 4758 at 9. "Instead, the Court held a three-day evidentiary hearing. ***Dugaboy could have offered the Rule 60(b) Motion's exhibits into evidence but chose not to do so.***" *Id.* (emphasis added).[17]

Nor did Dugaboy offer any evidence about the supposed similarities between the books' content and Dondero. Instead, Dugaboy's brief relies on a series of *ipse dixit* statements—but not a shred of actual record evidence—about purported similarities between and among Dondero, a fictional hedge fund manager, Judge Jernigan, a fictional judge, Highland Capital, and a fictional hedge fund. In contrast, Judge Jernigan found *on the record* in denying a prior failed recusal motion that she did not know Highland had once used the name "Ranger" and "everything in the two books should be viewed as fiction," which facts are conspicuously absent from Dugaboy's brief.[18] R.001525.

[17] The bankruptcy court made clear that "including the Rule 60(b) Motion, Rule 59(e) Motion, and documents attached to them [in the record on appeal] does not imbue the pleadings or their attachments with evidentiary or probative value." Dkt. 4758 at 10. Rather, "[t]he Court leaves it to the appellate court to determine what, if any, relevance the included items have to Dugaboy's appeals." *Id.*

[18] The Court may take judicial notice of the record in the prior recusal proceedings in this same bankruptcy case. *See* Fed. R. Evid. 201(b); *In re Deepwater Horizon*, 934 F.3d 434, 440 (5th Cir. 2019).

As Judge Odell found, "Dugaboy did not introduce any evidence on this issue." R.016463. Moreover, Dugaboy did not mention recusal in its opening statement. But Highland did, offering substantive arguments and specifically noting that Dugaboy had ignored the issue in its opening statement. *See* 5/11/2026 Tr. 55:15-57:3.[19] Dugaboy then conducted the entire hearing without asking a single witness a single question about recusal. The first and only time Dugaboy mentioned recusal was in its *rebuttal* closing argument, and only then in cursory fashion and in response to Highland's argument that Dugaboy had abandoned the issue. 5/21/2026 Tr. 243:23–244:25. Judge Odell did not abuse his discretion in concluding that was far too little, far too late.

C. Dugaboy's Merits Argument Grossly Mischaracterizes The Fifth Circuit's Rulings

Besides offering *ipse dixit*, Dugaboy mostly flogs a line in the Fifth Circuit's April 16, 2025, decision suggesting that "a strong argument could be made that [Judge Jernigan] had a duty to recuse." *Dondero*, 2025 WL 1122466, at *7; Br. 8, 20, 44, 47. But Dugaboy fails to mention that the Fifth Circuit expressly noted that, because "[t]he texts of the novels [were] not in the record," the Court was relying

[19] Dugaboy knew or should have known that Highland would address recusal in its opening statement. As required by Judge Odell's chambers rules, Highland filed its demonstrative slide deck on the docket several hours before court commenced, R.008413–22, and provided hard copies to Dugaboy's counsel at the hearing. Highland's deck included just ten slides, one of which was titled "Dugaboy's Recusal Arguments Are Meritless." R.008420.

only on "three parallels cited by the Dondero Parties"—*i.e.*, Dondero's cherry-picked excerpts and unsubstantiated comparisons. *Dondero*, 2025 WL 1122466, at *7. Dugaboy also fails to mention the Fifth Circuit's statement that

> ***the books are largely about other topics***. *He Watches All My Paths* is about a federal judge who receives death threats from a young, former tort victim. *Hedging Death*, though it involves a bankruptcy case and a firm that received funding from a hedge fund manager, is largely about the protagonist bankruptcy court judge. The hedge fund manager character who the Dondero Parties believe is patterned on Dondero is an individual who fakes his own suicide after linking up with Mexican drug cartels—***far from the real-life James Dondero***.

Id. (emphases added). And the Fifth Circuit again cautioned that it was speaking only "[f]rom the information we have in the record." *Id.*

All that is left is Dugaboy's grossly misleading claim that "the Fifth Circuit Judicial Council intervened and effected Judge Jernigan's recusal going forward." Br. 45; *see also id.* at 20 ("[T]he Judicial Council . . . resolved judicial misconduct complaints against Judge Jernigan arising from this matter through 'corrective action.'").[20] The Council's statements make clear, however, that Judge Jernigan *voluntarily* recused from the case going forward. R.001429. And far from "effecting" her recusal, the Council explicitly stated that "[n]either the judge's recusal nor anything in this order should be interpreted as an opinion or reflection on the merits of the judge's prior decision not to recuse." R.001429. Indeed, Chief

[20] Notably, Dugaboy fails to disclose that the five "complaints" addressed by the Judicial Council were all filed on the same day by Dondero and his employees/supporters.

Judge Elrod expressly recognized that Judge Jernigan's "prior decision not to recuse . . . *has been addressed* by the Fifth Circuit." *Id*. (emphasis added).

VI. DUGABOY'S CLAIM THAT THE BANKRUPTCY COURT'S FACTUAL FINDINGS MUST BE REVIEWED *DE NOVO* IS FORFEITED AND FORECLOSED BY SUPREME COURT AUTHORITY

Dugaboy claims this Court must "review *de novo* the rulings or findings of fact of an Article I bankruptcy judge." Br. 49. That argument is forfeited and squarely contrary to Supreme Court authority.

In *Wellness International Network, Ltd. v. Sharif*, 575 U.S. 665, 674 (2015), the Supreme Court held that "litigants may validly consent to adjudication by bankruptcy courts" of claims that would otherwise require adjudication by Article III courts. The Court further held that such consent may be "implied" by a party's conduct and explained that such a rule is essential to "increasing judicial efficiency and *checking gamesmanship*." *Id.* at 684–85 (emphasis added). Dugaboy has litigated this case for years, including throughout the entirety of the 9019 Hearing and these extensive Rule 60(b) proceedings, without objection. Dugaboy has thus plainly forfeited this thirteenth-hour attempt to dispute the bankruptcy court's authority.

Even if the Court considers this argument, Dugaboy has it dead wrong. Dugaboy acknowledges *Stern v. Marshall*'s holding that bankruptcy courts can enter final judgments (subject to more limited appellate review) where "the action at issue

stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process," regardless of whether it is "core" or "non-core." (Br. 50 (quoting 564 U.S. 462, 499 (2011))). Dugaboy does not explain, nor could it, how this case offends *Stern*. The 9019 Settlement approved a consensual resolution of HMIT's disputed Class 10 interest and disposition of estate property. R.001318. Dugaboy's right to object to the Settlement—to which it was not a party—derives from the Bankruptcy Code and Rule 9019 and is not a traditional common-law right protected by *Stern*. *See, e.g.*, *In re Josiahs Trucking, LLC*, 2025 WL 2214038, at *3 (Bankr. S.D. Tex. Aug. 4, 2025) (confirming that "[r]equests for authority to compromise disputes under [Rule] 9019" do not implicate *Stern*).

Dugaboy's curious invocation of *Trump v. Slaughter*, 609 U.S. 422 (2026), changes nothing. (Br. 50–51). That case concerned whether ***Article II*** of the Constitution requires that the President retain power to remove officers wielding the Executive Power, not the limits of Article I bankruptcy judges versus Article III judges. The historical footing of Article I bankruptcy courts is rock solid; no "other shoe" (Br. 51) is set to drop.

VII. THE BANKRUPTCY COURT DID NOT ABUSE ITS DISCRETION IN LIMITING DUGABOY'S ADDITIONAL DISCOVERY, OR IN PERMITTING DONDERO TO TESTIFY ONLY ON REBUTTAL IN COMPLIANCE WITH LOCAL AND CHAMBERS RULES

A. The Bankruptcy Court Did Not Abuse Its Discretion In Limiting The Scope Of Dugaboy's Discovery

The bankruptcy court did not abuse its discretion in limiting Dugaboy's Rule 60(b) discovery to documents and events following the May 19, 2025, filing of the Rule 9019 Motion. As the bankruptcy court recognized, Dugaboy had already had a full opportunity to explore the authority issue in discovery during the 9019 Hearing, and Rule 60(b)(2) required presentation of evidence that it could not have obtained through "reasonable diligence." 4/29/2026 Tr. 36:19–37:14. So production of evidence that Dugaboy neglected to ask for the first time around would not have been proper for a Rule 60(b)(2) motion. As for Rule 60(b)(3), Dugaboy did not explain how its requested discovery would demonstrate that it was prevented from presenting its argument in the original 9019 Hearing.

In any event, Highland produced to Dugaboy all of those pre-motion documents concerning Patrick's authority in the 9019 Hearing discovery. Dugaboy's suggestion that the limitation was unfair because "Highland had already agreed to, and benefited from, discovery responses from Dugaboy" (Br. 52) is laughable. Dugaboy attached more than 1,000 pages of material to its Rule 60(b) motion. R.000712–828. Highland tendered *two* document requests, asking Dugaboy to

identify and produce those documents it contended were "newly discover[ed]" under Rule 60(b)(2) and those it contended demonstrated "fraud" under Rule 60(b)(3). R.005404–10. Dugaboy's "response" was to claim that ***all*** of the documents in the Appendix supported all of the claims, which was no response at all. R.005418–25; R.005603.

B. The Bankruptcy Court Did Not Abuse Its Discretion In Enforcing Its Witness Rules

Dugaboy argues that the bankruptcy court "improperly restricted Dugaboy's case-in-chief by barring Dondero from testifying live in the hearing except as a rebuttal witness." (Br. 52.) But Dugaboy made a deliberate tactical decision not to include Dondero on its original pre-trial witness list, a decision Dugaboy confirmed during the trial. After Dugaboy's first witness completed her testimony, Dugaboy's counsel told the Court that "we only have two witnesses remaining. We have Ms. Bannon and Mr. Patrick. . . . And that is our case-in-chief." 5/11/2026 Tr. 202:15-19. Dugaboy later reversed course, asserting that Dondero became important "in light of the testimony that" came in through Patrick. 5/21/2026 Tr. 12:12-24. Far from the undisputedly "unintentional" omission at issue in cases such as *Washington v. Edwards Lifesciences, L.L.C.*, 2025 WL 3092764, at *3–4 (5th Cir. Nov. 5, 2025), here Dugaboy made a tactical decision that Highland reasonably relied upon in preparing its case, but which Dugaboy simply came to regret.

The rules are clear. Local Bankruptcy Rule 9014-1(c)(2) expressly requires witness lists be filed and exchanged "[a]t least 3 calendar days before the scheduled hearing date." Dugaboy acknowledges that Judge Odell's Chambers Rules leave no doubt that "scheduled hearing date" refers to "the first date set for . . . the hearing," not to each subsequent date on which a hearing may reconvene. (Br. 53.) Dugaboy complains that Judge Odell improperly enforced that rule to exclude Dondero from testifying in Dugaboy's case-in-chief. (Br. 53–55.) Dugaboy is wrong.

For starters, the Local Rule and Judge Odell's Chambers Rule do not conflict. The Local Rule refers to "the scheduled hearing date" and contemplates exchanging a list of all non-impeachment witnesses "at the beginning of the hearing." L.B.R. 9014-1(c)(2). The text does not refer to "that day's testimony" or delivery of a series of lists setting forth only "such witnesses as may be called on a particular day three days hence." Even under Dugaboy's (misguided) reading of the Local Rule, Judge Odell's rule does not conflict with it. Dugaboy's quotation selectively omits the words "at least," before "3 calendar days," (Br. 53); thus, judges are free to require exchange of witness lists *sooner* than the three-day minimum. In any event, if there *were* ambiguity in the text of the Local Rule, bankruptcy judges have "broad discretion in interpreting and applying their local rules adopted to promote efficiency in the court." *Bonner v. Adams (In re Adams)*, 734 F.2d 1094, 1102 (5th Cir. 1984).

Dugaboy wrongly claims that it "effectively" listed Dondero as a witness. (Br. 54.) Dugaboy reserved the right to call "any witness *called* by any other party." R.005937 (emphasis added). Highland listed Dondero as a potential witness *but decided not to call him*. 5/21/2026 Tr. 15:12. That was the risk Dugaboy assumed when it strategically decided not to include Dondero on its pre-trial witness list.

Dugaboy's invocation of an advisory committee comment to Rule 37 (Br. 54)—which does not govern here, because Local Rule 9014-1(c) does—does not help Dugaboy's cause. All that comment says is that "automatic" exclusion is not required; Dugaboy had the opportunity (but failed) to persuade the bankruptcy court that its failure was "substantially justified" or "harmless." 5/21/2026 Tr. 13:14–17 (asking the court to "excuse [Dondero's] omission from the initial witness list"); *id.* at 21:7–14. As Judge Odell explained, he had repeatedly "directed the parties to follow and review this Court's judge-specific guidelines." *Id.* at 20:7-9.

Finally, there was no error, much less an abuse of discretion, in admitting Dondero's deposition testimony as Dugaboy's *expressly* designated agent. Rule 32(a)(3) explicitly provides that the deposition transcript of a party or its agent may be used by an adverse party for "any purpose," regardless of the deponent's availability. Dugaboy's reliance on *Brazos River Authority v. GE Ionics, Inc.*, 469 F.3d 416 (5th Cir. 2006), (Br. 54–55) is misplaced. The Court held there that a corporation that makes a corporate witness under Rule 30(b)(6) available to testify

at trial must prepare the witness and cannot try to limit the testimony to facts within the witness's personal knowledge. Dondero did not testify as a Rule 30(b)(6) witness but merely as Dugaboy's agent. Moreover, Dugaboy called Dondero in rebuttal and thus Dondero was able to testify on any subject addressed in Highland's case-in-chief via his deposition excerpts. 5/21/2026 Tr. 101:6–12, 134–63. That is why Dugaboy does not—and cannot—point to any prejudice from this supposed error.

CONCLUSION

The bankruptcy court's judgment should be affirmed.

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Mark T. Stancil (*pro hac vice*)
mstancil@willkie.com
Joshua S. Levy (*pro hac vice*)
jlevy@willkie.com
WILLKIE FARR & GALLAGHER LLP
1875 K Street, N.W.
Washington, D.C. 20006
T: (202) 303-1000

Jeffrey N. Pomerantz (*pro hac vice*)
jpomerantz@pszjlaw.com
Gregory V. Demo (*pro hac vice*)
gdemo@pszjlaw.com
Jordan A. Kroop (*pro hac vice*)
jkroop@pszjlaw.com
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Fl.
Los Angeles, CA 90067
T: (310) 277-6910
F: (310) 201-0760

Counsel for Highland Capital Management, L.P. and the Highland Claimant Trust

John A. Morris (*pro hac vice*)
jmorris@pszjlaw.com
PACHULSKI STANG ZIEHL & JONES LLP
1700 Broadway, 36th Fl.
New York, NY 10019
T: (212) 561-7700
F: (212) 561-7777

/s/ Zachery Z. Annable
Melissa S. Hayward
MHayward@HaywardFirm.com
Zachery Z. Annable
ZAnnable@HaywardFirm.com
HAYWARD PLLC
10501 N. Central Expwy., Ste. 106
Dallas, TX 75231
T: (972) 755-7100
F: (972) 755-7110

CERTIFICATE OF SERVICE

I hereby certify that, on November 2, 2026, a true and correct copy of the foregoing document was served electronically via the Court's CM/ECF system upon all parties receiving electronic notice in this case.

/s/ Zachery Z. Annable
Zachery Z. Annable

CERTIFICATE OF COMPLIANCE

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