

Amy L. Ruhland  
Texas Bar No. 24043561  
**REICHMAN JORGENSEN LEHMAN & FELDBERG LLP**  
901 S. Mopac Expwy, Suite 300  
Austin, TX 78746  
Tel.: (737) 227-3102  
Email: [aruhland@reichmanjorgensen.com](mailto:aruhland@reichmanjorgensen.com)

Charles W. Gamos, Jr., P.C.  
Texas Bar No. 00796956  
Douglas Wade Carvell, P.C.  
Texas Bar No. 00796316  
**HOGE & GAMEROS. L.L.P.**  
6116 North Central Expressway, Suite 1400  
Dallas, Texas 75206  
Tel.: 214-765-6002  
Email: [bgamos@legaltexas.com](mailto:bgamos@legaltexas.com)  
[wcarvell@legaltexas.com](mailto:wcarvell@legaltexas.com)

*Attorneys for NexPoint Real Estate Partners,  
LLC (f/k/a HCRE Partners, LLC)*

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

In re:

HIGHLAND CAPITAL MANAGEMENT,  
L.P.

Debtor.

Chapter 11

Case N. 19-34054 (SGJ)

**STATEMENT OF THE ISSUES AND DESIGNATION OF RECORD ON APPEAL  
PURSUANT TO FED. R. BANKR. P. 8009**

Pursuant to Federal Rule of Bankruptcy Procedure 8009, NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) (“NexPoint”), by and through undersigned counsel, hereby submits this designation of the record on appeal of the *Memorandum Opinion and Order Granting Highland Capital Management, L.P.’s Motion for (A) Bad Faith Finding and (B)*



*Attorneys' Fees Against NexPoint Real Estate Partners LLC (F/K/A HCRE Partners, LLC) in Connection With Proof of Claim # 146* [Dkt. Nos. 4038 and 4039] and *Order Denying Motion of NexPoint Real Estate Partners, LLC (F/K/A/ HCRE Partners, LLC) Seeking Relief From Order Pursuant to Fed. R. of Bankr. P. 9024 and Fed. R. Civ. P. 60(b)(1) & (6)* [Dkt. 4069] (the "Orders"), entered by the United States Bankruptcy Court for the Northern District on March 5, 2024 and May 21, 2024, respectively.

## **I. Statement of the Issues**

1. Did the bankruptcy court err in determining that NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) ("HCRE") filed Proof of Claim # 146 (the "POC") in bad faith when it is undisputed that HCRE acted on the advice of counsel in filing the POC, where the POC was explicitly dependent on discovery, and where there is insufficient evidence to support any finding that HCRE acted in bad faith at the time of the filing?

2. Did the Bankruptcy Court err in determining that HCRE pursued the POC in bad faith, when the motion filed by Highland Capital Management, L.P. ("Highland") did not make that argument and where HCRE indisputably attempted to withdraw the POC with prejudice?

3. Did the Bankruptcy Court err in denying HCRE's Motion for Relief from Order, where it is clear from the record that HCRE sought to withdraw its POC *with prejudice* and where the Bankruptcy Court's Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (F/K/A HCRE Partners, LLC) in Connection With Proof of Claim # 146 ("Bad Faith Order") repeatedly finds that HCRE refused to withdraw its POC with prejudice and where that finding is central to the Bankruptcy Court's conclusion that HCRE pursued its POC in bad faith?

## **II. Did the Bankruptcy Court err in denying HCRE's Motion for Relief from Order, where it is clear from the Bad Faith Order that the Bankruptcy Court inappropriately considered and relied upon arguments raised for the first time in Highland's appeal**

**brief, at least one of which was subsequently withdrawn by Highland, and where HCRE was not afforded an opportunity to respond to Highland’s arguments made for the first time in reply? Designation of the Record**

**1. Notice of Appeal**

- a. Notice of Appeal filed on March 18, 2024, in the Chapter 11 bankruptcy case of Highland Capital Management, L.P. [Dkt. No. 4043].
- b. Amended Notice of Appeal filed on March 20, 2024, in the Bankruptcy Case [Dkt. No. 4044].
- c. Second Amended Notice of Appeal filed on June 4, 2024, in the Bankruptcy Case [Dkt. No. 4074]

**2. The Judgment, Order, or Decree At Issue On Appeal**

- a. *Memorandum Opinion and Order Granting Highland Capital Management, L.P.’s Motion for (A) Bad Faith Finding and (B) Attorneys’ Fees Against NexPoint Real Estate Partners LLC (F/K/A HCRE Partners, LLC) in Connection With Proof of Claim # 146* [Dkt. Nos. 4038 and 4039]
- b. *Order Denying Motion of NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Seeking Relief From Order Pursuant to Fed. R. of Bankr. P. 9024 and Fed. R. Civ. P. 60(b)(1) & (6)* [Dkt. 4069]

**3. Opinions, Findings of Fact, and Conclusions of Law of the Bankruptcy Court**

- a. *Memorandum Opinion and Order Granting Highland Capital Management, L.P.’s Motion for (A) Bad Faith Finding and (B) Attorneys’ Fees Against NexPoint Real Estate Partners LLC (F/K/A HCRE Partners, LLC) in Connection With Proof of Claim # 146* [Dkt. Nos. 4038 and 4039]
- b. *Order Denying Motion of NexPoint Real Estate Partners, LLC (F/K/A/ HCRE Partners, LLC) Seeking Relief From Order Pursuant to Fed. R. of Bankr. P. 9024 and Fed. R. Civ. P. 60(b)(1) & (6)* [Dkt. 4069] (the “Orders”).

**4. Docket Sheet for the Bankruptcy Case**

- a. *In re Highland Capital Management, L.P.* No. 19-34054 (SGJ) (Bankr. N.D. Tex.)

**5. Additional items (as described in the Docket Sheet for the Bankruptcy Case)**

NexPoint hereby designates the following items in the record on appeal from Cause No.

19-34054-sgj 11:

<b>DATE</b>	<b>DKT. NO.</b>	<b>DESCRIPTION</b>
07/30/2020	0906	Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
10/19/2020	1212	NexPoint Real Estate Partners LLC's Response to Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
04/14/2021	2196	Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief
04/14/2021	2197	Debtor's Memorandum of Law in Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief
04/14/2021	2198	Declaration of John A. Morris in Support of the Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief
05/06/2021	2278	Response to Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC
05/06/2021	2279	Brief in Opposition to Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC
05/06/2021	2280	Motion to File Appendix Under Seal
05/12/2021	2294	Debtor's Preliminary Reply in Further Support of Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief
10/01/2021	2893	Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief
10/01/2021	2894	Highland's Memorandum of Law in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief
10/01/2021	2895	Declaration of Kenneth H. Brown in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief

10/15/2021	2926	Appendix in Support of HCRE Partners, LLC Brief in Opposition to Debtor's Motion to Disqualify Wick Phillips Gould & Martin, LLP
10/15/2021	2927	Response and Brief in Opposition to Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and Related Relief
10/15/2021	2928	Supplemental Appendix in Support of NexPoint Real Estate Partners, LLC's Response and Brief in Opposition to Debtor's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP
10/22/2021	2952	Highland's Reply in Support of Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief
11/30/2021	3065	Court Admitted Exhibits Date of Hearing November 30, 2021 re: Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners, LLC and for Related Relief
12/05/2021	3084	Transcript Regarding Hearing Held on November 30, 2021 re: Motion to Disqualify
12/10/2021	3106	Order Granting in Part and Denying in Part Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin LLP as Counsel to HCRE Partners, LLC and For Related Relief
08/12/2022	3443	Motion to Withdraw Proof of Claim for NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC re: Claim 146
09/02/2022	3487	Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim
09/02/2022	3488	Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Objection to Motion to Withdraw Proof of Claim
09/09/2022	3505	Reply in Support of Motion to Withdraw Proof of Claim
09/09/2022	3508	Highland Capital Management, L.P.'s Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on September 12, 2022
09/12/2022	3513	Court Admitted Exhibits Date of Hearing September 12, 2022 re: Motion to Withdraw Proof of Claim for NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC re: Claim No. 146
09/14/2022	3519	Transcript Regarding Hearing Held September 12, 2022 re: 1) Motion to Withdraw Proof of Claim for Nexpoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC re: Claim No. 146; 2)

		Motion to Compel re: Discovery Depositions
09/14/2022	3518	Order Denying Motion to Withdraw Proof of Claim as Moot
09/15/2022	3525	Amended Order Denying Motion to Withdraw Proof of Claim
10/27/2022	3590	Reorganized Debtor's Witness and Exhibit List with Respect to Trial to be Held on November 1 and 2, 2022
10/27/2022	3591	NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC Witness and Exhibit List with Respect to Evidentiary Hearing to be Held on November 1 and 2, 2022
10/29/2022	3593	Objections to Debtor's Designated Exhibits
10/31/2022	3597	Reorganized Debtor's Amended Witness and Exhibit List with Respect to Trial to be Held on November 1, 2022
10/31/2022	3599	NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC Amended Witness and Exhibit List with Respect to Evidentiary Hearing to be held on November 1, and 2, 2022
11/01/2022	3611	Court Admitted Exhibits Date of Hearing November 1, 2022 re: Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
11/08/2020	3616	Transcript Regarding Hearing Held November 1, 2022 re: Debtor's Objection to HCRE's Proof of Claim
11/10/2022	3619	Highland Capital Management, L.P.'s Motion for Leave to File Post-Trial Brief and Related Relief
11/22/2022	3634	Order Granting Highland Capital Management, L.P.'s Motion for Leave to File Post-Trial Brief and For Related Relief
11/22/2022	3635	Highland Capital Management, L.P.'s Post-Trial Brief Addressing HCRE's Executory Contract Defense
12/02/2022	3641	Response to Debtor's Post-Hearing Brief
12/07/2022	3644	Highland Capital Management, L.P.'s Reply to HCRE's Post-Trial Brief
04/28/2023	3766-3767	Memorandum Opinion and Order Sustaining Debtor's Objection to and Disallowing Proof of Claim Number 146
06/16/2023	3851	Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146
06/16/2023	3852	Declaration of John A. Morris in Support of Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of

		Claim 146
12/22/2023	3995	Response to Debtor's Motion for (A) Bad Faith Finding and (B) Attorneys' Fees
01/19/2024	4018	Highland Capital Management L.P.'s Reply in Further Support of its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) In Connection with Proof of Claim 146
01/23/2024	4023	Highland Capital Management, L.P.'s Amended Reply in Further Support of its Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146
01/25/2024	4030	Transcript Regarding Hearing Held January 24, 2024 Before Judge Stacey G.C. Jernigan re: 1) Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146; and 2) Highland's Motion to Stay Contested Matter [Dkt. 4000] or Alternative Relief
03/05/2024	4038-4039	Memorandum Opinion and Order Granting Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim #146
03/18/2024	4040	Motion for Relief From Order
03/18/2024	4041	Memorandum of Law in Support of Motion for Relief from Order
04/22/2024	4052	Highland's Opposition to Motion for Relief from Order
05/01/2024	4055	Reply in Support of Motion for Relief from Order
05/21/2024	4069	Order Denying Motion of NexPoint Real Estate Partners, LLC (f/k/a HCRE Partners, LLC) Seeking Relief from Order Pursuant to Fed. R. of Bankr. P. 9024 and Fed. R. Civ. P. 60(b)(1) & (6)

**6. Transcript and Exhibits (as described in the Docket Sheet for Bankruptcy Case No. 19-34054-sgj11:**

<b>DATE</b>	<b>DKT. NO.</b>	<b>DESCRIPTION</b>
11/30/2021	3065	Court Admitted Exhibits Date of Hearing November 30, 2021 re: Highland's Supplemental Motion to Disqualify Wick Phillips Gould & Martin, LLP as Counsel to HCRE Partners,

		LLC and for Related Relief
12/05/2021	3084	Transcript Regarding Hearing Held on November 30, 2021 re: Motion to Disqualify
09/12/2022	3513	Court Admitted Exhibits Date of Hearing September 12, 2022 re: Motion to Withdraw Proof of Claim for NexPoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC re: Claim No. 146
09/14/2022	3519	Transcript Regarding Hearing Held September 12, 2022 re: 1) Motion to Withdraw Proof of Claim for Nexpoint Real Estate Partners, LLC f/k/a HCRE Partners, LLC re: Claim No. 146; 2) Motion to Compel re: Discovery Depositions
11/01/2022	3611	Court Admitted Exhibits Date of Hearing November 1, 2022 re: Debtor's First Omnibus Objection to Certain (A) Duplicate Claims; (B) Overstated Claims; (C) Late-Filed Claims; (D) Satisfied Claims; (E) No-Liability Claims; and (F) Insufficient-Documentation Claims
11/08/2020	3616	Transcript Regarding Hearing Held November 1, 2022 re: Debtor's Objection to HCRE's Proof of Claim
01/25/2024	4030	Transcript Regarding Hearing Held January 24, 2024 Before Judge Stacey G.C. Jernigan re: 1) Highland Capital Management, L.P.'s Motion for (A) Bad Faith Finding and (B) Attorneys' Fees Against NexPoint Real Estate Partners LLC (f/k/a HCRE Partners, LLC) in Connection with Proof of Claim 146; and 2) Highland's Motion to Stay Contested Matter [Dkt. 4000] or Alternative Relief
05/16/2024		Hearing Held on Motion for Relief From Order <sup>1</sup>

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<sup>1</sup> An order for the transcript was submitted on June 4, 2024, in accordance with Fed. R. Bankr. P. 8009(b). The order is attached hereto as Exhibit A.



Dated: June 4, 2024

Respectfully Submitted,

REICHMAN JORGENSEN LEHMAN &  
FELDBERG

/s/ Amy L. Ruhland

Amy L. Ruhland

Texas Bar No. 24043561

[aruhland@reichmanjorgensen.com](mailto:aruhland@reichmanjorgensen.com)

901 S. Mopac Expwy, Suite 300

Austin, TX 78746

Tel.: (737) 227-3102

HOGUE & GAMEROS. L.L.P

Charles W. Gameros, Jr., P.C.

Texas Bar No. 00796956

[bgameros@legaltexas.com](mailto:bgameros@legaltexas.com)

Douglas Wade Carvell, P.C.

Texas Bar No. 00796316

[wcarvell@legaltexas.com](mailto:wcarvell@legaltexas.com)

6116 North Central Expressway, Suite 1400

Dallas, Texas 75206

Tel.: 214-765-6002

*Attorneys for. Attorneys for NexPoint Real  
Estate Partners, LLC (f/k/a HCRE Partners,  
LLC)*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on June 4, 2024, a true and correct copy of this document was served electronically via the Court's CM/ECF system to the parties registered or otherwise entitled to receive electronic notices in this case.

*/s/ Amy L. Ruhland*

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Amy L. Ruhland

# EXHIBIT A

