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

In re:	§	Chapter 11
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Case No. 19-34054-sgj11
Debtor.	§	
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	Adversary Proceeding No.
Plaintiff,	§	21-03000-sgj
vs.	§	
HIGHLAND CAPITAL MANAGEMENT FUND ADVISORS, L.P., NEXPOINT ADVISORS, L.P.,	§	

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



HIGHLAND INCOME FUND, NEXPOINT
STRATEGIC OPPORTUNITIES FUND,
NEXPOINT CAPITAL, INC., AND CLO
HOLDCO, LTD,

Defendants.

**DECLARATION OF MR. JAMES P. SEERY, JR. IN SUPPORT OF THE DEBTOR'S MOTION
FOR A PRELIMINARY INJUNCTION AGAINST CERTAIN ENTITIES OWNED AND/OR
CONTROLLED BY MR. JAMES DONDERO**

I, James P. Seery, Jr., pursuant to 28 U.S.C. § 1746(a), declare under penalty of perjury as follows:

1. I am a member of the Board of Directors (the "Board") of Strand Advisors, Inc. ("Strand"), the general partner of Highland Capital Management, L.P. (the "Debtor"), and the Debtor's Chief Executive Officer ("CEO") and Chief Restructuring Officer ("CRO"). I submit this Declaration in support of the *Debtor's Motion for a Temporary Restraining Order and Preliminary Injunction against Certain Entities Owned and/or Controlled by Mr. James Dondero* (the "Motion"), being filed concurrently with this declaration. Unless stated otherwise, this declaration is based on my personal knowledge, my review of the documents described below, and my communications with certain of the Debtor's employees, directors, and counsel.

2. The defendants in this action are (a) two registered investment advisors, Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NPA," and together with HCMFA, the "Advisors"), (b) three investment funds managed by the Advisors, Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the "Funds"),² and (c) CLO Holdco, Ltd. ("CLO Holdco" and together with the Advisors and the Funds, the "Defendants"), a wholly-owned subsidiary of the Charitable DAF Fund, L.P. (the "DAF").

² HCMFA is the investment advisor for Highland Income Fund, and NPA is the investment advisor for NexPoint Strategic Opportunities Fund and NexPoint Capital, Inc.

3. On information and belief, Mr. James Dondero (“Mr. Dondero”) directly or indirectly (a) owns and controls each of the Advisors, (b) owns and/or effectively controls CLO Holdco, and (c) controls each of the Funds through his portfolio management of the funds and influence over the directors. As set forth below and as reflected in written communications attached as exhibits to my declaration, the Defendants have interfered with and impeded the Debtor’s business, and they have threatened to initiate a process aimed at removing the Debtor as the portfolio manager of certain investment funds denominated as collateralized loan obligation vehicles (“CLOs”). The Funds invested in certain of the CLOs at the direction of the Advisors. CLO Holdco also invested in the CLOs.

4. I am advised that the Defendants’ actions and threatened actions violate two court orders and the automatic stay, and that the Defendants would have no right to take the actions and threatened actions even if that were not the case. The Debtor brings this Motion to protect its contractual rights and to otherwise enforce this Court’s prior orders.

A. Mr. James Dondero Owns and/or Controls Each of the Defendants

5. There can be no genuine dispute that Mr. Dondero owns and/or effectively controls each of the Defendants.

The Advisors and the Funds

6. On December 16, 2020, Mr. Dustin Norris (“Mr. Norris”) testified under oath in support of the *Motion for Order Imposing Temporary Restrictions on Debtor’s Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles* that was brought by the Advisors and Funds [Docket No. 1528] (the “Restriction Motion”).

7. Mr. Norris is the Executive Vice President of each the Advisors and each of the Funds. See Transcript of December 16, 2020, hearing on the Restriction Motion (the “Hearing”), a true and correct copy of which is attached as **Exhibit 1**, at 38:15-39:2.

8. During the hearing, Mr. Norris testified that Mr. Dondero (a) directly or indirectly owns and controls each of the Advisors, and (b) is the portfolio manager of each of the Funds, each of which is advised by one of the Advisors. **Exhibit 1** at 35:15-37:13.

9. This portion of Mr. Norris's testimony is corroborated by, among other things, (a) the Funds' public filings with the Securities and Exchange Commission in which each of the Funds disclosed that the Advisors were owned and controlled by Mr. Dondero, and that Mr. Dondero was the portfolio manager for each of the Funds, and (b) the assertion in a letter dated December 31, 2020, sent on behalf of the Advisors and the Funds, that "Mr. Dondero is the lead (and in some cases the sole) portfolio manager for certain of the Funds. He is intimately involved in the day-to-day operations and investment decisions regarding those Funds and the operations of the Advisors."

CLO Holdco

10. CLO Holdco is a wholly-owned and controlled subsidiary of the DAF. On information and belief, the DAF is managed by the Charitable DAF Holdco, Ltd. ("**DAF Holdco**"), which is the managing member of the DAF.

11. On information and belief, DAF Holdco is owned by three different charitable foundations: Highland Dallas Foundation, Inc., Highland Santa Barbara Foundation, Inc., and Highland Kansas City Foundation, Inc. (collectively, the "**Highland Foundations**"). On information and belief, Mr. Dondero is the president and one of the three directors of each of the Highland Foundations. On information and belief, Mr. Grant Scott ("**Mr. Scott**") is an intellectual property lawyer based in Raleigh, North Carolina, Mr. Dondero's college roommate, and serves as an officer and director of each of the Highland Foundations.

12. Although the Debtor is the non-discretionary investment advisor to the DAF, neither the Board nor I, as the Debtor's CEO and CRO, have any right or ability to control or direct the DAF or CLO Holdco. Instead, on information and belief, the DAF takes and considers investment and payment advice from the Debtor, but ultimate decisions are in the control of Mr. Scott who acts substantially at Mr. Dondero's direction.

B. This Court Has Entered Two Orders that Are Implicated by the Defendants' Actions and Threatened Actions

13. This Court has entered two Orders that are relevant to the Motion and the relief sought by the Debtor.

14. On December 27, 2019, the Debtor filed that certain *Motion of the Debtor for Approval of Settlement with the Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* [Docket No. 281] (the "Settlement Motion"). On January 9, 2019, this Court entered an Order granting the Settlement Motion [Bankruptcy Case Docket No. 339] (the "Settlement Order"). A true and correct copy of the Settlement Order is attached as **Exhibit 2**.

15. As part of the Settlement Order, this Court also approved a term sheet (the "Term Sheet") [Bankruptcy Case Docket No. 354-1] between the Debtor and the Official Committee of Unsecured Creditors (the "Committee") pursuant to which Mr. John S. Dubel, Mr. Russell Nelms, and I were appointed to the Board. A true and correct copy of the Term Sheet is attached as **Exhibit 3**.

16. As required by the Term Sheet, on January 9, 2020, Mr. James Dondero resigned from his roles as an officer and director of Strand and as the Debtor's President and Chief Executive Officer. True and correct copies of Mr. Dondero's resignation letters dated January 9, 2020, are attached as **Exhibit 4**.

17. The Settlement Order directed Mr. Dondero not to “cause any Related Entity to terminate any agreements with the Debtor.” **Exhibit 2** ¶9.

18. I understand that each of the Defendants is a “Related Entity” as defined in the Term Sheet because each of the Defendants is directly or indirectly owned and/or controlled by Mr. Dondero and/or Mr. Scott. See **Exhibit 3**, Ex. D (Reporting Requirements) ¶1.D(A)(i) and (ii).

19. I also understand that the Defendants’ actions and threatened actions implicate the *Order Granting Debtor’s Motion for a Temporary Restraining Order against James Dondero* [Adv. Pro. No. 20-03190-sgj, Docket No. 10], entered on December 10, 2020 (the “**TRO**” and together with the Settlement Order, the “**Orders**”). A true and correct copy of the TRO is attached as **Exhibit 5**.

20. Pursuant to the TRO, the Court temporarily enjoined and restrained Mr. Dondero from, among other things, “interfering with or otherwise impeding, directly or indirectly, the Debtor’s business” and from “causing, encouraging, or conspiring with (a) any entity owned or controlled by [Mr. Dondero], and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct [as defined in the TRO],” including interfering or impeding the Debtor’s business. **Exhibit 5** ¶¶2(d), 3.

C. Defendants Interfere with and Impede the Debtor’s Business and Threaten to Terminate the Debtor’s Management Contracts

21. In addition to filing the Restriction Motion, on at least four separate occasions within the last two weeks, the Defendants have either interfered with and impeded the Debtor’s business or have threatened to do so by initiating the process for removing the Debtor as the portfolio manager of the CLOs. I am advised that such conduct violates the Orders and flouts the Court’s decision on the Restriction Motion and the Court’s observations made at the Hearing.

22. **First**, on December 22, 2020, employees of NPA and HCMFA interfered with and impeded the Debtor’s business by refusing to settle the CLOs’ sale of AVYA and SKY securities that I had personally authorized. The Advisors engaged in this conduct notwithstanding (a) the denial of the Restriction Motion and the Court’s pointed comments during the Hearing, and (b) Mr. Norris’s sworn acknowledgments on behalf of the Advisors and Funds during the Hearing that (i) the Debtor’s management of the CLOs is governed by written contracts as to which none of the Advisors or Funds are parties (**Exhibit 1** at 41:25-42-7; (ii) the Debtor has the exclusive duty and responsibility to buy and sell assets on behalf of the CLOs (*id.* at 42:17-43:3); and (iii) as the Advisors knew when they caused the Funds to invest in the CLOs, holders of preference shares (such as the Funds) have no right to make investment decisions on behalf of the CLOs (*id.* at 43:4-11).

23. Notably, the Advisors’ interference with trades that I authorized on behalf of the CLOs is the same type of conduct that led the Court to impose the TRO against Mr. Dondero. *See Declaration of Mr. James P. Seery, Jr. in Support of Debtor’s Motion for a Temporary Restraining Order against Mr. James Dondero* [Adv. Pro. No. 20-03190-sgi, Docket No. 4 ¶¶21-23, Ex. 8].

24. **Second**, also on December 22, 2020, the Defendants wrote to the Debtor and renewed their “request” that the Debtor refrain from selling any assets on behalf of the CLOs until the confirmation hearing (the “December 22 Letter”). In support of their “request,” the Defendants re-asserted almost verbatim the arguments advanced in connection with the Restriction Motion – all of which were soundly rejected by the Court.

25. The Debtor responded on December 24, 2020, by demanding that the Defendants withdraw their December 22 Letter and confirm, by the close of business on December 28, 2020,

that neither the Defendants nor anyone acting on their behalf will take any further steps to interfere with the Debtor's directions as the CLOs' portfolio manager. A true and correct copy of the December 22 Letter and the Debtor's response is attached as **Exhibit 6**. The Defendants have not complied with the Debtor's demands.

26. *Third*, the Defendants threatened to seek to remove the Debtor as the portfolio manager of the CLOs. Specifically, in a letter dated December 23, 2020 (the "December 23 Letter"), the Defendants informed the Debtor that one or more of them "intend to notify the relevant trustee and/or issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference for the applicable provisions of the United State Bankruptcy Code, including the automatic stay of Section 362."

27. The Debtor responded to the December 23 Letter the next day and advised the Defendants that the Settlement Order prohibited the termination of the Debtor's management agreements with the CLOs, and that there was no factual, legal, or contractual basis to remove the Debtor as the CLOs' portfolio manager in any event. The Debtor demanded that the Defendants withdraw their December 23 Letter and commit, by the close of business on December 28, 2020, not to take any actions, directly or indirectly, to terminate the CLO management agreements. A true and correct copy of the December 23 Letter and the Debtor's response is attached as **Exhibit 7**. The Defendants have not complied with the Debtor's demands.

28. Because Mr. Dondero owns and/or effectively controls the Defendants, the Debtor forwarded the correspondence between the Debtor and the Defendants, including the Defendant's Letters, to Mr. Dondero's counsel. In response, Mr. Dondero's counsel contended that "[w]hile there are relationships between my client and some of the movants, I believe they

are separate entities and should be treated as such.” A true and correct copy of the communications between counsel for Mr. Dondero and the Debtor is attached as **Exhibit 8**.

29. I understand that during a “meet and confer” call with Defendants’ counsel on December 30, 2020, the Debtor specifically requested that the Defendants promptly bring the matters to the Court for resolution by bringing a motion to terminate the CLO management agreements and for related relief, or the Debtors would be forced to commence an action for declaratory relief and bring this Motion in order to bring clarity to the Debtor’s contractual rights. I also understand that, in response, Defendants’ counsel would not commit to bring any motion, only that they would file an objection to Debtor’s plan of reorganization. The Debtor believes that its disputes with the Defendants can and must be promptly resolved.

30. ***Finally***, because Mr. Dondero continues to interfere with the Debtor’s business and engage in disruptive behavior, the Debtor gave notice to Mr. Dondero on December 23, 2020, that the Debtor would evict him and terminate all services provided to him, as of December 30, 2020. A true and correct copy of the Debtor’s letter dated December 23, 2020, letter is attached hereto as **Exhibit 9**. On December 31, 2020, counsel to the Advisors and the Funds sent a letter to Debtor’s counsel (the “December 31 Letter” and together with the December 22 Letter and December 23 Letter, the “Defendants’ Letters”) contending that the Debtor’s decision to remove Mr. Dondero from the Debtor’s offices and services was damaging the Advisors and the Funds and implied that the Debtor would be economically responsible for such damage. Mr. Dondero’s counsel was copied on that letter. A true and correct copy of the December 31 Letter is attached hereto as **Exhibit 10**.

31. On January 4, 2021, the Debtor responded to the December 31 Letter by noting that (a) Mr. Dondero did not seek judicial relief, make any of the contentions the advanced in the

December 31 Letter, or even complain to the Debtor, (b) no action was taken against Entities, only against Mr. Dondero, (c) Mr. Dondero was given reasonable notice of his eviction and the termination of the Debtor's services to him, such that he could have and should have made alternative arrangements to avoid any disruption, and (d) nothing prevents Mr. Dondero from continuing to work on behalf of the Entities. The Debtor also noted that it will take all steps to protect its interests against any further frivolous claims and threats made by the Defendants. A true and correct copy of the Debtor's January 4, 2021, letter is attached as **Exhibit 11**.

32. To the best of my knowledge, Mr. Dondero has taken no steps to cause the Defendants—entities that he indisputably owns and/or effectively controls and that are each a “Related Entity” under the Term Sheet—to comply with the Debtor's demands made in response to the Defendants' Letters.

D. The Debtor's Request for a Temporary Restraining Order

33. The Defendants cannot be permitted to continue to interfere with, or impede, the Debtor's business.

34. Based on the foregoing, as a member of the Board and as the Debtor's CEO and CRO, I respectfully request that the Court grant the Motion in its entirety and enter the proposed Temporary Restraining Order in the form affixed to the Motion.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: January 6, 2021

/s/ James P. Seery, Jr.
James P. Seery, Jr.

EXHIBIT 1

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

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In Re:) **Case No. 19-34054-sgj-11**
) Chapter 11
)
HIGHLAND CAPITAL) Dallas, Texas
MANAGEMENT, L.P.,) Wednesday, December 16, 2020
) 1:30 p.m. Docket
Debtor.)
) - MOTION FOR ORDER IMPOSING
) TEMPORARY RESTRICTIONS [1528]
) - DEBTOR'S EMERGENCY MOTION TO
) QUASH SUBPOENA AND FOR ENTRY
) OF PROTECTIVE ORDER [1564,
) 1565]
) - JAMES DONDERO'S MOTION FOR
) ENTRY OF ORDER REQUIRING
) NOTICE AND HEARING [1439]
)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE STACEY G.C. JERNIGAN,
UNITED STATES BANKRUPTCY JUDGE.

WEBEX APPEARANCES:

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Gregory V. Demo
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For the Official Committee Matthew A. Clemente
of Unsecured Creditors: SIDLEY AUSTIN, LLP
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1 APPEARANCES, cont'd.:

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1 DALLAS, TEXAS - DECEMBER 16, 2020 - 1:35 P.M.

2 THE COURT: All right. This is Judge Jernigan. We
3 have settings in Highland. We have -- I guess the very first
4 thing that we had set today was a motion of Dondero, Mr.
5 Dondero wanting some sort of revised procedures for "future
6 estate transactions occurring outside the ordinary course of
7 business." Then, related to that, we received the other day
8 -- I'm not showing it on the calendar, I'm not sure if that
9 means it's moot now or not, but we had a motion for protective
10 order and a motion to quash with regard to certain depositions
11 that Mr. Dondero wanted in connection with his motion. The
12 Debtor filed that motion to quash. It was to quash a
13 deposition of Mr. Dubel, Mr. Nelms, Mr. Sevilla, and Mr.
14 Caruso. And then we have the CLO Motion, what I'm calling the
15 CLO Motion, of --

16 (Interruption.)

17 THE COURT: Okay. Let's --

18 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.
19 The first two motions have been resolved. And after Your
20 Honor takes appearances, I'm happy to inform the Court of the
21 proposed resolution, and there's an agreed order that we would
22 upload after the hearing.

23 THE COURT: Okay. Well, that is certainly music to
24 my ears. All right. So I was just trying to lay out the
25 program for what I thought was set, potentially three motions,

1 one of which was a deposition dispute.

2 All right. So let's go ahead and get appearances. Mr.
3 Pomerantz, you're obviously appearing for the Debtor team.

4 MR. POMERANTZ: Yes. Good morning, Your Honor. Or
5 good afternoon, Your Honor. Jeff Pomerantz; Pachulski Stang
6 Ziehl & Jones. Also on the video with me today are John
7 Morris and Greg Demo. They will be handling the CLO Motion,
8 and I will be reporting to the Court on the resolution of Mr.
9 Dondero's motion and our corollary discovery motions.

10 THE COURT: Okay. All right. Well, why don't I take
11 an appearance from Mr. Dondero next. Mr. Lynn, I see you
12 there.

13 MR. LYNN: Yes, Your Honor. I am here with Bryan
14 Assink, who will replace me after the preliminaries when our
15 business is done. Other than concurring with Mr. Pomerantz, I
16 wanted to advise Your Honor that in the last 30 minutes we
17 filed an additional motion where we're seeking a clarification
18 with respect to the temporary restraining order that the Court
19 entered last week.

20 THE COURT: All right. Well, I did see an email from
21 my courtroom deputy right before walking in about that motion,
22 and so that's why I was a little surprised and said "Music to
23 my ears" that there was an agreed order on the Dondero
24 motions. But I'll get the details --

25 MR. LYNN: Well, we're --

1 THE COURT: I'll get the details about that in a
2 minute. Let me go ahead and get the other appearances.

3 For the Movants on what I've called the CLO Motion, who do
4 we have appearing?

5 MR. WRIGHT: Good afternoon, Your Honor. It's James
6 Wright of K&L Gates for the -- I guess I'll call them the
7 Movant for this motion.

8 THE COURT: Yes. Sometimes you're referred to as the
9 Advisors and the Funds and -- but Movants on Docket Entry
10 1528.

11 All right. For the Committee, I know you have weighed in
12 on a couple of these motions. Who do we have?

13 MR. CLEMENTE: Good afternoon, Your Honor. Matt
14 Clemente with Sidley Austin on behalf of the Committee.

15 THE COURT: All right. Well, we have a lot of folks
16 on the phone. I think I've covered everybody who filed a
17 pleading for today. Is there anyone else who would like to
18 appear? I'd really like to restrict it only to those who have
19 filed pleadings today.

20 MS. MATSUMURA: This is Rebecca Matsumura from King &
21 Spalding representing Highland CLO Funding, Ltd. I don't
22 expect I'll be weighing in today, but there are a couple
23 issues that I may say a sentence on, so I want to go ahead and
24 make my appearance now.

25 THE COURT: All right. Thank you. Anyone else?

1 MR. BAIN: Yes, Your Honor. Joseph Bain; Jones
2 Walker; on behalf of the CLO Issuers.

3 THE COURT: All right.

4 MR. BAIN: And Your Honor, if we may make certain
5 comments at the requisite time, we'd appreciate it.

6 THE COURT: All right. Thank you. Anyone else?

7 All right. Well, Mr. Pomerantz, let's hear about the
8 agreements you have on the Dondero-related motions.

9 MR. POMERANTZ: Happy to, Your Honor. And yes, Mr.
10 Lynn is correct, we saw also an emergency motion that came
11 through that I'll have a couple of comments at the end of my
12 presentation.

13 So, as I mentioned before, Your Honor, I'm pleased to
14 report that with respect to the two motions that Your Honor
15 scheduled for today's hearing, we have an agreement with Mr.
16 Dondero. One was the motion of Mr. Dondero requiring
17 transactions out of the ordinary course to be brought before
18 this Court. The second was the Debtor's motion to quash a
19 series of subpoenas that had been issued in the last two days,
20 requiring board members and others to testify.

21 As part of the agreement, we have agreed with Mr. Dondero
22 that his motion, which is presently set for today, shall be
23 continued to January 4th, which is the same date set as the
24 continued hearing on the preliminary injunction relating to
25 the TRO that Your Honor had entered last week.

1 As part of that agreement, the Debtor has agreed that it
2 will provide Mr. Dondero with three business days' notice
3 before selling any non-security assets from any managed funds
4 accounts through and including January 13th, which is the date
5 set for confirmation.

6 While, as the Court is aware, the Debtor doesn't believe
7 that any notice, opportunity for hearing, or an order from the
8 Court is required in connection with such transactions, as the
9 Debtor does not have any current plans to sell non-security
10 assets from managed funds before confirmation, it was willing
11 to agree to the notice requirement as essentially a way of
12 resolving the motion before Your Honor today and continuing
13 until the 4th.

14 As part of the agreement as well, Your Honor, the parties
15 have agreed that there will be no further discovery in
16 connection with the motion that is set. That'll be no
17 additional discovery by Mr. Dondero, so he is withdrawing the
18 subpoenas as it relates to this motion, and there will be no
19 further discovery as -- by the Debtor. As Your Honor, I
20 think, is aware, there were depositions conducted of both Mr.
21 Seery and Mr. Dondero on Monday in connection with this
22 motion, but the discovery will not happen over the next couple
23 of weeks.

24 Mr. Dondero wanted to make sure, and the Debtor didn't
25 have any opposition, that that agreement with respect to no

1 discovery only relates to the pending motion before the Court.
2 And in connection with any other matters relating to this
3 bankruptcy case, Mr. Dondero would reserve the right to pursue
4 discovery, and of course the Debtors would reserve the right
5 to challenge discovery if we believed it was inappropriate or
6 unduly burdensome.

7 With respect to the motion that was just filed, Your
8 Honor, we had a chance to briefly review it. We haven't had a
9 chance to discuss it with the board. In any event, we don't
10 think there's an emergency. Mr. Dondero wants the opportunity
11 to approach and communicate with the board. I've told Mr.
12 Lynn that communications regarding the plan are to go through
13 Mr. Seery. Mr. Seery is the Debtor's chief executive officer.
14 He's the chief restructuring officer. And at this point, the
15 board doesn't see a reason or have a desire to meet with Mr.
16 Dondero to talk about his plan, but, again, would be happy to
17 receive any written communications that Mr. Dondero has.

18 Mr. Dondero has sought to modify the TRO to allow him to
19 speak to the board. Again, if the board agreed to speak with
20 Mr. Dondero, that wouldn't violate the TRO, provided that
21 counsel would be present. But at this point, the board has
22 decided that it would be inappropriate and not a good use of
23 anyone's time to have that communication and that Mr. Dondero
24 should continue to communicate through Mr. Seery, the Debtor's
25 chief executive officer.

1 If Your Honor, after reading the motion and hearing my
2 comments, and I'm sure Judge Lynn's comments that he will make
3 to Your Honor, Your Honor wants to set it for hearing, we
4 would submit, Your Honor, there's no emergency and that a
5 hearing could be set next week, but we would think Your Honor
6 might be able to dispose of the motion just on the papers and
7 the limited argument that would go on today.

8 THE COURT: All right.

9 MR. POMERANTZ: Thank you, Your Honor.

10 THE COURT: All right. Mr. Lynn, first, could you
11 confirm the terms of the agreed order that Mr. Pomerantz just
12 announced are consistent with what you and your client
13 believed was negotiated?

14 THE CLERK: He's on mute.

15 THE COURT: You're on mute, sir.

16 MR. LYNN: Mr. Pomerantz has correctly stated the
17 agreement of the parties. I am pleased to advise Your Honor
18 that I expect that we will withdraw the motion that is
19 presently pending to be heard on January 4th, since all we
20 were asking for was notice until confirmation date. If those
21 sales are going to take place before then, we don't have a
22 problem any longer with the pre-confirmation activity of Mr.
23 Seery.

24 With regard to the motion that we filed requesting that
25 the temporary restraining order be modified, we would point

1 out, respectfully, that the independent board is the board of
2 directors of Strand Advisors. Strand Advisors belongs to Mr.
3 Dondero. It is not unreasonable for the sole stockholder of
4 Strand Advisors to ask the board questions or present thoughts
5 to the board or ask its advice. Mr. Seery, on the other hand,
6 while being a member of the board of Strand, is the chief
7 executive officer and the chief restructuring officer of
8 Highland, which is not the same as Strand.

9 Furthermore, Your Honor, Mr. Dondero has been attempting
10 for several months to negotiate an arrangement by which the
11 Debtor can continue as a going concern. It is his desire to
12 discuss further with the board as a whole what he can do in
13 that regard. I think the Court, by directing him originally
14 to participate in the mediation that took place in September,
15 expected him to do so. He has attempted to do so. And while
16 he has not gotten a response from the Creditors' Committee
17 that is definitive, he has at least caught the interest of Mr.
18 Seery, though that interest may have died for a variety of
19 reasons in recent weeks.

20 And by the way, next week is fine with us. We're not in a
21 hurry beyond that if the Court feels further discussion would
22 be useful.

23 MR. POMERANTZ: Your Honor, just a couple of points
24 in response.

25 Mr. Dondero has the right to request an audience with the

1 board. He has requested the audience with the board. The
2 board has considered it and decided not to communicate in that
3 fashion with Mr. Dondero at this time. There is nothing that
4 Your Honor can do in the TRO that would change that, other
5 than ordering the board to speak with Mr. Dondero, which I
6 highly doubt Your Honor would do.

7 Having said that, this board in general and Mr. Seery in
8 particular have been very supportive of an overall resolution
9 to this case, not only with the creditors, but with Mr.
10 Dondero. Mr. Seery has spent tens if not hundreds of hours
11 over the last several months working with Mr. Dondero to try
12 to get him in a position to present something that would have
13 traction with the Unsecured Creditors. Unfortunately, that
14 hasn't occurred. We understand there have been communications
15 between Mr. Lynn and Mr. Clemente. And if there is any hope
16 of a plan and any traction with the creditors, this Debtor in
17 general and Mr. Seery in particular stands ready, willing, and
18 able to do anything within the Debtor's power to help that
19 out.

20 So, it's not really the Debtor standing in the way. It's
21 an economic agreement ultimately that needs to be reached with
22 Mr. Clemente and his constituents and Mr. Lynn. And if that
23 can be reached, we will be the first to jump on that bandwagon
24 and do everything humanly possible to have that occur.

25 Thank you, Your Honor.

1 THE COURT: All right. Well, again, I've not read
2 the motion. I've just seen an email that I have this motion.
3 I'm a little bit confused. I don't want to spend too long on
4 this because we have another motion to get to. But I'm a
5 little bit confused on how Dondero wants the TRO to be
6 modified. If he has the right already to request an audience
7 of the board, what is it that is problematic about the TRO
8 that he wants modified?

9 THE CLERK: He's on mute.

10 THE COURT: You're on mute.

11 MR. LYNN: Sorry, Your Honor. As I told you before,
12 you must forgive me, my command of technology is not great.

13 In response, I would say that I question whether it is
14 appropriate, in advance of a meeting with the board of his
15 company, that what he wants to talk about should be screened.
16 And that is what has occurred in our effort to meet by
17 telephone with the board.

18 Any such meeting would, of course, be subject to the
19 restraints that are included in the temporary restraining
20 order, in that both Mr. Pomerantz or his designee and I would
21 participate in any such discussion. I respectfully submit
22 Strand is his. Nobody may like that, but it is his, and he
23 ought to be able to talk to his own board.

24 THE COURT: Is this about having a conversation
25 without the Committee's involvement? I just don't -- hmm. I

1 just need to see the motion.

2 Mr. Clemente, anything you want to add at this juncture?
3 Have you even reviewed the motion yet?

4 MR. CLEMENTE: Your Honor, I apologize. I haven't
5 actually even seen the motion. And so I have no comment on
6 it, Your Honor. I apologize for not having been able to look
7 at it.

8 THE COURT: Okay. Well, what about the agreed order
9 that's been announced? Any comment on that?

10 MR. CLEMENTE: Your Honor, we support the resolution
11 that Mr. Pomerantz announced on the record.

12 THE COURT: Okay. All right. Well, I assume there's
13 nothing further, then, on the Dondero motions that were
14 scheduled today?

15 All right. So I will happily accept the agreed order that
16 has been announced. For now, we will continue the Dondero
17 motion that was Docket Entry No. 1439 to January 4th, when the
18 preliminary injunction hearing is set. And we -- I understand
19 there are going to be no more discovery requests in connection
20 with these matters that were set today.

21 And I will review the motion that Mr. Dondero has filed
22 shortly before today's hearing in chambers later, and I will
23 have my courtroom deputy communicate to the lawyers whether I
24 see fit to set it for an emergency hearing next week or rule
25 on the pleadings or set it for January 4th. Those are, I

1 guess, the three possibilities I can think of that I might
2 decide upon.

3 So, again, I'm not making any ruling at all on a motion I
4 haven't read yet. So I'll -- the courtroom deputy will let
5 you all know, if not later today, tomorrow. Probably
6 tomorrow, because I have a confirmation hearing set later
7 today in another case.

8 All right. So, thank you all for working these issues
9 out. And Mr. Pomerantz, Mr. Dondero -- or, excuse me, Mr.
10 Lynn, anything further on the Dondero disputes?

11 MR. POMERANTZ: Nothing from the Debtor, Your Honor.

12 MR. LYNN: Your Honor, nothing from Mr. Dondero. May
13 I be excused?

14 THE COURT: Is anyone anticipating needing Mr.
15 Dondero's counsel for the other matter? All right. If not,
16 then I certainly have no problem with you dropping off the
17 line, Mr. Lynn. Thank you.

18 MR. LYNN: Thank you, Your Honor.

19 THE COURT: Okay. All right. So let's turn next to
20 the CLO Motion. I take it there are no agreements on this
21 one?

22 MR. POMERANTZ: There are not, Your Honor.

23 MR. WRIGHT: There are not, Your Honor. I can
24 confirm that.

25 THE COURT: All right. Mr. Wright, do you have

1 anything you want to say as far as an opening statement before
2 we go to the evidence?

3 MR. WRIGHT: I don't, Your Honor. My intention, if
4 it's okay with you, you asked me to bring a witness, so I do
5 have Mr. Norris from my client, and I was going to just remind
6 the Court who I am and state the name of all of my Movants,
7 and then I was going to move directly to put him on the stand
8 and go through a brief direct.

9 THE COURT: All right. I think I heard Mr. Morris is
10 going to handle this phase of the hearing.

11 MR. DEMO: And Your Honor, this is Greg Demo from
12 Pachulski on behalf of the Debtor.

13 THE COURT: Oh, okay.

14 MR. DEMO: We would like to make a brief opening
15 statement before we have witnesses, if that's all right with
16 Your Honor.

17 THE COURT: All right. I'm fine with that. So, --

18 MR. DEMO: All right.

19 THE COURT: -- go ahead.

20 MR. DEMO: All right. Well, thank you, Your Honor.
21 Again, Greg Demo; Pachulski Stang; on behalf of the Debtor.

22 We are here today on what really amounts to the third of
23 three motions that deal with Mr. Dondero's attempts, either
24 directly or through a proxy, to transfer control away from the
25 Debtor and back to Mr. Dondero.

1 The current motion is filed by NexPoint Capital and
2 Highland Capital Management Fund Advisors and three of their
3 managed funds: Highland Income Fund, NexPoint Capital, and
4 NexPoint Strategic Opportunities Funds.

5 Mr. Dondero owns and controls NexPoint Capital and
6 Highland Capital Management Fund Advisors. While both
7 NexPoint Capital and Highland Capital Management Fund Advisors
8 are governed by boards, the boards have no investment
9 authority with respect to the funds they manage, nor was the
10 boards' approval necessary to file the motion, or obtained.

11 Mr. Dondero is the sole portfolio manager for NexPoint
12 Strategic Opportunities Fund and Highland Income Fund. Mr.
13 Dondero is one of three portfolio managers for NexPoint
14 Capital. Mr. Dondero's decisions are not subject to
15 oversight.

16 The Movants disclosed these facts in their recent SEC
17 filings, and there can be no dispute that Mr. Dondero is the
18 controlling figure behind the Movants in the relief being
19 sought in the motion which seeks to impede the Debtor's
20 efforts to exercise its rights as a CLO manager.

21 The fact that this motion was even filed is quite
22 surprising, since on December 7th the Debtor filed a complaint
23 and TRO based upon Mr. Dondero's unlawful efforts to frustrate
24 the Debtor's efforts to sell assets from the very CLOs that
25 are the subject of this motion.

1 The Court granted the TRO on December 10th. Mr. Dondero
2 also filed a motion seeking similar relief in November, which
3 has now been adjourned to January 4th.

4 The Movants are essentially now seeking an order from this
5 Court enjoining the Debtor from exercising its rights as a CLO
6 manager and requiring the Debtor to seek the Movants' and Mr.
7 Dondero's permission to fulfill its obligations as a manager
8 for the CLOs.

9 The Movants, however, do not come right out and say this,
10 and instead couch the motion as seeking to simply pause the
11 CLOs' asset sales while the Movants and the Debtor engage in
12 discussions regarding the future of the CLOs' management.

13 In the motion, the Movants also argue the Debtor has made
14 decisions detrimental to the interests of the preference
15 shareholders because the Debtor is trying to monetize its
16 assets in a manner inconsistent with the preference shares'
17 objectives.

18 The Movants simply mischaracterize the facts, the parties'
19 respective rights under contracts, and the law.

20 First, to the extent the Movants hold interests, they hold
21 only preference shares in the CLOs and are minority investors
22 in the preference shares of 12 of the 15 CLOs at issue. In
23 one third of the CLOs, the Movants' interests sit behind
24 senior debt which must be paid first.

25 Notably, Your Honor, no other investors in the CLOs are

1 here or have expressed support for the Movants' position.

2 Second, the Movants simply have no right under the
3 contracts governing the CLOs to the relief they are
4 requesting. The CLOs are governed by a series of agreements
5 which were agreed to long ago and dictate the rights of all
6 investors of the CLOs. The enforceability of those agreements
7 is relied on by all investors, not just the Movants.

8 Under these agreements, investment discretion is given to
9 the CLOs' manager -- in this case, the Debtor -- and no
10 investor has the right to direct the CLO manager. The manager
11 was chosen to manage the CLOs' assets. No individual investor
12 was chosen to manage the CLOs' assets.

13 Simply said, there will be no evidence that the Movants
14 have the right to do what they're trying to do, and there will
15 be no evidence that the Movants' preferences with respect to
16 the CLOs' assets is in line with that of the other investors
17 in the CLOs.

18 Under the relevant agreements, if an investor is not happy
19 with a manager's performance, the investor's rights are
20 generally limited to replacing the manager. The investors
21 here -- excuse me, the Movants here -- have not done that and
22 cannot do that. Under the agreements, replacement requires at
23 least the majority of the preference shares that are not
24 affiliates of the managers. In 12 of the 15 CLOs, the Movants
25 hold a substantial minority interest position. They are not

1 the majority. In the three CLOs in which they are the
2 majority, the Movants still cannot replace the Debtor as the
3 investment manager because they are the Debtor's affiliates.

4 It is indisputable that, prior to January 9th, when Mr.
5 Dondero was removed from control of the Debtor, that the
6 Debtor, NexPoint Advisors, Highland Capital Management Fund
7 Advisors, and the three funds were the Debtor's affiliates
8 because of Mr. Dondero's common control.

9 After January 9th, where the Court removed Mr. Dondero
10 from control of the Debtor, the Debtor is arguably, under the
11 documents, not an affiliate. However, Your Honor, the Movants
12 have disclosed in their recent proxy statements filed in 2020
13 that they still consider themselves the Debtor's affiliate,
14 and they should be bound by that statement. The Movants, by
15 virtue of Mr. Dondero's being removed from control of the
16 Debtor, should not be able to use that removal to reassert
17 control over the CLOs that were taken away from Mr. Dondero
18 when he was removed in January 2020.

19 The Debtor believes that additional briefing may be needed
20 on this issue, and that a ruling specifically on this issue
21 and the parties' relative rights under the CLO management
22 agreements may be needed. The Debtor reserves its right to
23 brief this issue and to bring it before this Court, either as
24 a declaratory judgment or any other procedurally-appropriate
25 motion.

1 Because the Debtor -- excuse me. The Movants have no
2 right to the relief requested. They argue that the relief is
3 justified because of the mismatch between the investors'
4 timelines and the Movants'. This is not true. The Movants
5 cite to three transactions to justify their statement in the
6 motion: SSP, OmniMax, and certain recent transactions.

7 The recent transactions were the attempted sales of two
8 public equities immediately before Thanksgiving that Mr.
9 Dondero interfered with. You'll hear testimony from Mr. Seery
10 about each of these transactions and how each was in the best
11 interest of the CLOs.

12 First, SSP. SSP is a steel business that was suffering
13 for a number of reasons. The Debtor's investment team
14 believed SSP should be sold since 2019. The Debtor received
15 multiple offers for SSP, the Debtor evaluated these offers,
16 and the Debtor choose the one that was the best. The SSP sale
17 closed in early November.

18 Notably, Your Honor, none of the CLOs held an equity
19 interest in SSP, its parent, or in Trussway. Instead, they
20 held debt, and they got exactly what they bargained for,
21 repayment of their debt obligations in full.

22 OmniMax, Your Honor, is the second one. It is a
23 fabricator of building materials. The CLOs and the Movants
24 held an interest in OmniMax debt which they have been trying
25 to refinance or equitize since 2019. That deal was intended

1 to include the Movants, but instead of working with the
2 Debtor, Mr. Dondero held out and used the threat of litigation
3 against OmniMax to secure a higher price for the Movants, to
4 the detriment of the CLOs.

5 As Mr. Seery will testify, these two transactions were all
6 about maximizing value and have nothing to do with investment
7 timelines.

8 Finally, Your Honor, the Movants reference the
9 Thanksgiving transactions. These transactions were discussed
10 in the context of Mr. Dondero's TRO. Mr. Seery directed
11 Debtor personnel, on the advice of his investment team, to
12 sell these securities. Mr. Dondero blocked those trades. Now
13 the Movants argue that the reason those trades were blocked
14 was because of a mismatch between the Movants' and the
15 Debtor's investment timelines. That is not the case. Mr.
16 Seery will testify as to these trades. The Debtor is an
17 investment manager and appreciates that its decisions with
18 respect to how it manages its assets are -- is a judgment
19 call. The evidence, however, will show that the Debtor at all
20 times exercised that judgment in good faith based on all
21 available information.

22 The Movants may disagree with the Debtor's judgment, Your
23 Honor, but that is irrelevant. The Movants have no right to
24 interfere with the Debtor's management of the CLOs. There is
25 simply no statutory or contractual basis for this, not under

1 Section 363 and not under the CLO agreements.

2 Finally, Your Honor, -- I guess not finally. There's one
3 more point I want to make. But Your Honor, this -- what we're
4 here on today is notably similar to the Acis bankruptcy that
5 Your Honor noted last time we were here last week. In that
6 bankruptcy, HCLOF tried to direct the collateral manager to
7 take certain actions that HCLOF thought were in the best
8 interest of the CLOs. In this case, the Movants, through Mr.
9 Dondero, are trying to file an action that functionally seeks
10 to direct the Debtor to take interests that the Movants
11 believe are in their best interest. There is substantial
12 overlap between the litigation in Acis and the litigation
13 here.

14 Finally, Your Honor, the Debtor has been in discussions
15 with the CLOs' counsel on this issue. And the Debtor has been
16 informed that the CLOs' position is that the Debtor's ability
17 to operate under the management agreements should not be
18 interfered with, not by the Movants or not by any other party.

19 Thank you, Your Honor. With that, I will turn it over to
20 Mr. Norris. Or, I'm sorry, Mr. Wright.

21 THE COURT: All right. Mr. Wright, you may call your
22 witness.

23 MR. WRIGHT: All right, Your Honor. Dustin Norris
24 should be -- should be dialed in and should be available on
25 screens.

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1 THE COURT: Okay. I'm going to --

2 MR. WRIGHT: I'll pause and have him confirm that.

3 THE COURT: I'm going to ask you, Mr. Wright, to
4 speak up or closer to your device. I didn't hear the name of
5 your witness.

6 MR. WRIGHT: Sure. Sorry. It's Dustin Norris. I --
7 last time, you were having trouble hearing me, and so I'm
8 trying a different device this time. I actually followed the
9 instructions that I found very helpful, so I'm trying my phone
10 in hopes that it will work better.

11 THE COURT: All right.

12 MR. WRIGHT: But, yeah, it's Dustin Norris. D-U-S-T-
13 I-N, N-O-R-R -- N-O-R-R-I-S.

14 THE COURT: All right. Mr. Norris, can you say
15 "Testing one two" so we pick up your video?

16 MR. NORRIS: Testing one two.

17 THE COURT: All right.

18 MR. NORRIS: Testing one two.

19 THE COURT: All right. Please raise your right hand.

20 DUSTIN NORRIS, MOVANTS' WITNESS, SWORN

21 THE COURT: All right. Mr. Wright, you may proceed.

22 MR. WRIGHT: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. WRIGHT:

25 Q Mr. Norris, you're employed by NexPoint Advisors?

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1 A I am. That's correct.

2 Q And what is your title and role there?

3 A Yeah. I am the executive vice president of NexPoint
4 Advisors. In that role, I oversee business development,
5 marketing, sales, investor relations. And as far as the funds
6 advised by the advisor, I'm the liaison with the independent
7 board on the business side.

8 Q Thank you. Do you also have a role for Highland Capital
9 Management Fund Advisors?

10 A I do. I'm also the same executive vice president and
11 fulfill that same role as it pertains to business development,
12 sales, investor relations. And in both, I'm also working on
13 product development. So, launching, developing new products
14 and investment funds.

15 Q Do you also have a role for Highland Income Fund, NexPoint
16 Strategic Opportunities Fund, and NexPoint Capital, Inc.?

17 A I do. I'm also executive vice president for each of those
18 funds.

19 Q Thank you. Have you ever served on the boards of these
20 three funds?

21 A I have. I've served as the interested trustee, sole
22 interested trustee for each of these funds. I'm no longer the
23 board member or interested trustee, but still serve as an
24 officer, executive vice president, for each fund.

25 Q At times, I'm going to refer to NexPoint Advisors, LP and

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1 Highland Capital Management Fund Advisors, LP simply as the
2 Advisors, to avoid having to keep saying their long names.
3 And similarly with the three funds that are part of the
4 motion, I may just call them the Funds.

5 Can you explain the relationship between the Advisors and
6 the Funds, briefly?

7 A Yeah. So, each of these are investment companies that are
8 registered under the Investment Company Act of 1940. So, with
9 that comes a unique relationship between an investment advisor
10 and the funds themselves. The Funds don't have employees.
11 They rely on the investment advisor and investment advisor
12 employees. And between the Funds and the Advisors is an
13 investment advisory agreement. And the Funds themselves are
14 also overseen by an independent board, and that's by statute
15 by the 1940 Act.

16 Q Okay. And just to be clear, when you said that these are
17 -- entities are investment companies, you meant that the three
18 Funds are investment companies?

19 A Correct. Correct. The three Funds are investment
20 companies. The investment advisors are not investment
21 companies.

22 Q Thank you. Can you explain the role of the board for the
23 Funds?

24 A Yeah. So, as prescribed by the Investment Company Act of
25 1940, there are certain obligations related to an investment

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1 company, and one of those is they must be overseen by an
2 independent board. And the independent board has a
3 responsibility to oversee the -- certain material agreements,
4 including the advisory agreement. And we meet regularly with
5 the boards. They overseas certain processes and, again, all
6 material contracts. And the board is, by Section 15(c) of the
7 1940 Act, required by law to annually review the capabilities
8 of the Advisor and to either approve or reject the advisory
9 contracts. So, each year, those contracts are renewed by the
10 independent board.

11 There are certain obligations of the Fund and operations
12 that are delegated responsibility to the investment advisors.
13 That includes portfolio management and investment decisions.
14 But all those are overseen by the board.

15 Q Okay. And are the boards involved in the day-to-day
16 operations of the Funds?

17 A They're not.

18 Q Okay. And do you know who the members of the boards of
19 these three Funds are?

20 A I do.

21 Q Could you share that with us?

22 A Yeah. So, the -- there is one interested trustee of each
23 board, and that's John Honis. And then for the Highland
24 Income Fund and the NexPoint Strategic Opportunities Fund --
25 sorry, for NexPoint -- for Highland Income Fund and NexPoint

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1 Capital, we have the same three disinterested or independent
2 trustees, and that's Bryan Ward, Dr. Bob Froehlich, and Ethan
3 Powell. And for NexPoint Strategic Opportunities Fund, we
4 have the same four trustees, one interested, three
5 independent, but there's another fourth independent trustee,
6 Ed Constantino.

7 Q And when you refer to independent trustees, do you mean
8 independent for purposes of the Investment Company Act of
9 1940, as amended?

10 A That's correct. They, by statute, they are independent
11 trustees. They also have an independent legal counsel. Stacy
12 Louizos represents them from Blank Rome. And also two of
13 these Funds are listed on the New York Stock Exchange, and the
14 New York Stock Exchange has various independence requirements
15 that each independent director has met.

16 Q Thank you. And which are the two Funds that are listed on
17 NYSE?

18 A The Highland Income Fund and the NexPoint Strategic
19 Opportunities Fund are both NYSE-listed.

20 Q And I know you probably haven't memorized everybody who
21 invests in the Funds, but can you give us a general idea of
22 who invests in these Funds?

23 A Certainly. I definitely have not memorized them. There
24 are thousands of individual investors in each of these Funds.
25 Part of my role overseeing investor relations and sales, I do

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1 talk to a lot of those investors. But the majority of the
2 investors in each of these Funds are individual investors.

3 As '40 Act Funds, almost anybody with a brokerage account
4 can buy them. They have tickers, particularly the Funds that
5 are listed. Closed-end funds. And so, with that, it is mom-
6 and-pop investors. It's retail investors, including myself.
7 I've allocated my 401(k) to these funds, the majority of my
8 401(k) to these funds. But there are also institutional
9 investors. There's hedge funds. There's ETFs. There are
10 large high-net-worth individuals. But the majority of it is
11 individual investors that have invested through their
12 brokerage firms, be it Wells Fargo, Morgan Stanley, or Cetera.
13 These are -- these are -- these are the individual investors.

14 Q Thank you. Does Mr. Dondero have investments in the
15 Funds? Do you know?

16 A He does. He's invested in each of the Funds.

17 Q Does he have a majority investment in any of the Funds?

18 A He does not have a majority investment in any of the
19 Funds.

20 Q Thank you. Does Mr. Dondero have a control relationship
21 with the two Advisors?

22 A Yes. He does. With the Advisors.

23 Q And does he have a control relationship with the Funds?

24 A As it pertains to portfolio management, he is a portfolio
25 manager of each Fund. But as discussed, as I mentioned, the

1 independent board on an annual basis has the ability to
2 terminate or renew our advisory contracts, and that -- that
3 dynamic removes the control, overall control, of the Funds in
4 that regard.

5 Q Are you familiar with the motion that the Court I think
6 has accurately referred to as the CLO Motion that was filed by
7 the two Advisors and the three Funds?

8 A Yes. I am familiar with it.

9 Q And I'm going to ask you a question now that I think is of
10 interest to the Court, based on the last time I was in front
11 of Judge Jernigan. Were any employees of the Debtor involved
12 in deciding to bring this motion or in preparing the motion?

13 A No. None of the HCMLP employees, to my knowledge, were
14 involved in preparing or deciding to bring the motion.

15 Q Okay. And you investigated who was involved in preparing
16 the motion, so your knowledge is pretty good on this point?

17 A Correct. I have. And none were involved, based on that
18 investigation.

19 Q (garbled) involved in deciding to bring a motion,
20 preparing it, other than outside counsel and my firm?

21 A Yeah. So, the initial cause for concern was raised by Mr.
22 Dondero himself to our legal -- internal legal team and
23 compliance team. And working together with them, myself, and
24 outside counsel, and senior management of Highland Capital
25 Management Fund Advisors, including Joe Sowin, we prepared the

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1 order. Or, sorry, not the order, the motion.

2 Q All right. Thank you. Were the boards of the three Funds
3 involved at all with bringing the motion?

4 A They were not involved in the preparation of the motion
5 itself. They were aware and supportive, but they did not
6 prepare the motion.

7 Q You provided a (audio gap), correct?

8 A Sorry. You did cut out there. I didn't hear the
9 question.

10 Q I'll try again. You provided a declaration (garbled)
11 motion, correct?

12 A I did, yes.

13 Q And there are two exhibits to your declaration. There's
14 an Exhibit A and an Exhibit B.

15 A Correct.

16 Q Exhibit A, does this reflect the current repayment status
17 of the various CLOs as we -- as you understand it to be as of
18 December 1st?

19 A Yes, it does.

20 Q And does Exhibit (garbled) of the three Funds --

21 THE COURT: Okay. Mr. --

22 BY MR. WRIGHT:

23 Q -- and the various CLOs, --

24 THE COURT: Mr. Wright?

25 BY MR. WRIGHT:

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1 Q -- as you understand it?

2 THE COURT: Mr. Wright, time out. Two things.

3 First, I don't know what you can do to improve --

4 MR. WRIGHT: Sure.

5 THE COURT: -- your connection, but you're

6 occasionally breaking up a little.

7 But second, can we be clear for myself, the record,
8 everyone else, what you're referring to right now? We have an
9 Advis... your witness and exhibit list is at Docket 1573. Is
10 that what I should be looking at first?

11 MR. WRIGHT: Yes, Your Honor. The declaration of Mr.
12 Norris. It's Docket 1522-1. And it's on our exhibit list.
13 It may be the only exhibit on our exhibit list, frankly.

14 THE COURT: Okay. So you're talking about his
15 declaration now, not the witness and exhibit list with the
16 attachments to it? Actually, it is attached here. Exhibit A.
17 Okay. I'm there. I went to Exhibit A in your attachments to
18 your exhibit list at 1573.

19 All right. Let's try again with your question you just
20 asked.

21 MR. WRIGHT: Sure.

22 BY MR. WRIGHT:

23 Q So, Mr. Norris, Exhibit A, this reflects the current
24 repayment status of the CLOs that are the subject of the
25 motion as of December 1. Correct?

1 A Correct.

2 Q And then --

3 MR. WRIGHT: Your Honor, if you turn to Exhibit B,
4 which is just a couple pages forward.

5 MR. MORRIS: Your Honor, I would ask that this be put
6 up on the screen, if possible.

7 THE COURT: Yes. Can you do that, please?

8 MR. WRIGHT: I'm sorry. I couldn't hear that, John.

9 THE COURT: He asked if you could --

10 MR. MORRIS: I would --

11 THE COURT: -- share your screen. Can you share your
12 screen as to what you're looking at?

13 MR. WRIGHT: Can I share my screen? Last time I was
14 using a computer and you were having trouble hearing me, so
15 this time I'm doing it on my phone. So my phone, no, I don't
16 have this on my phone to share my screen that way. It's
17 Docket 1522-1, and it's the only exhibit that was on our
18 exhibit list.

19 MR. MORRIS: No objection, Your Honor.

20 MR. WRIGHT: All it shows is the holdings in Funds in
21 the CLOs. That's all it is.

22 MR. MORRIS: No objection, Your Honor.

23 THE COURT: Okay.

24 MR. NORRIS: I'm sorry, John. I didn't hear.

25 THE COURT: Give me a minute, because I was at 1573,

1 your witness and exhibit list.

2 (Pause.)

3 THE COURT: Okay. That's not the correct docket
4 number.

5 MR. MORRIS: Your Honor?

6 THE COURT: Yes?

7 MR. MORRIS: If I may, it's John -- it's John Morris.
8 It's Docket No. 1528. And the declaration can be found at
9 Page 12 of 26.

10 MR. WRIGHT: Thank you.

11 THE COURT: 1528?

12 MR. WRIGHT: That's bizarre, because I have a
13 printout of it and it says Docket 1522-1.

14 THE COURT: Okay. 1528 is the -- the actual motion
15 we've set for hearing.

16 MR. MORRIS: And it's attached to that, yes. If you
17 -- if you go to PDF Page 12, it's the first page of the
18 declaration.

19 THE COURT: Okay. I'm there now. Okay. So we're on
20 that declaration. And then you were having the witness look
21 first at Exhibit A to that declaration. And then where are
22 you having him look next? Exhibit B, which is entitled
23 "Holdings of Preferred Shares in CLOs"?

24 MR. WRIGHT: Exhibit B, Your Honor.

25 THE COURT: Okay. Continue.

Norris - Direct

34

1 MR. WRIGHT: (garbled) I think some of the exhibits
2 that I have had the wrong docket number printed on the top,
3 and I --

4 BY MR. WRIGHT:

5 Q Exhibit B. So, Mr. Norris, Exhibit B to your declaration
6 shows the holdings of the preference shares of the Funds in
7 the various CLOs that are the subject of the motion, correct?

8 A That's correct. One clarification. It shows the
9 percentage ownership of each of those preference share
10 tranches that each Fund owns.

11 Q Thank you. Mr. Norris, do the three Funds have a date by
12 which they have to liquidate their investments?

13 A Sorry, you did skip out there. If you could you repeat
14 the question. I apologize.

15 Q It's frustrating. Do the three Funds have a date by which
16 they must liquidate their investments?

17 A No. They do not.

18 Q Okay. Can you briefly explain why the Advisors and the
19 Funds brought this motion?

20 A Yeah. The Advisors and the Funds were concerned with
21 certain transactions, as described in the motion. As
22 preference share owners, we own the majority or a substantial
23 portion of the economics of most of these CLOs, and in three
24 instances the majority of the economic benefit. And there was
25 concern with the way that the sales were executed. And so,

1 with that, we're simply asking for a temporary relief in order
2 to benefit and to maximize the recovery for our preference
3 shares that we own.

4 Q Thank you.

5 MR. WRIGHT: All right, Your Honor. I have no
6 further questions for Mr. Norris, although I guess I reserve
7 the right to redirect.

8 THE COURT: All right. Cross-examination?

9 MR. MORRIS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. MORRIS:

12 Q Good afternoon, Mr. Norris. Can you hear me?

13 A I can. Thank you, Mr. Morris.

14 Q All right. I'm going to go into a little bit more detail
15 about some of the topics that you discussed. To be clear
16 here, there are five moving parties; is that right?

17 A That's correct. The two Advisors and the three Funds.

18 Q And one of the advisory firms is Highland Capital
19 Management Fund Advisors, LP; is that right?

20 A That's correct.

21 Q And I'll refer to that as Fund Advisors; is that okay?

22 A That's great.

23 Q James Dondero and Mark Okada are the beneficial owners of
24 Fund Advisors, correct?

25 A That is my understanding, yes.

1 Q And your understanding is that Mr. Dondero controls Fund
2 Advisors, correct?

3 A That's correct.

4 Q And the other advisory firm that brought the motion is
5 NexPoint Advisors, LP; is that right?

6 A That is correct.

7 Q And Mr. Dondero is the beneficial owner of NexPoint; is
8 that right?

9 A A family trust where Jim is the sole beneficiary, I
10 believe, controls or owns NexPoint Advisors.

11 Q Okay. And Mr. Dondero --

12 A Or 99.9 percent of NexPoint Advisors.

13 Q Thank you for the clarification. Mr. Dondero controls
14 NexPoint; is that right?

15 A Correct.

16 Q All right. And I'm going to refer to Fund Advisors and
17 NexPoint as the Advisors going forward; is that fair?

18 A That's fair.

19 Q Each of the Advisors manages certain funds; is that right?

20 A That is correct.

21 Q And three of those funds that are managed by the Advisors
22 are the Movants on this motion, correct?

23 A Correct.

24 Q All right. The Advisors caused these three Funds to
25 invest in CLOs that are managed by the Debtor; is that right?

1 A The portfolio managers working for the Advisors did.

2 That's correct.

3 Q And Mr. Dondero is the portfolio manager of the Highland
4 Income Fund; is that right?

5 A He is one of the portfolio managers for that Fund.

6 Q And he's also --

7 A I believe there are two.

8 Q And he's also a portfolio manager of NexPoint Capital,
9 Inc., one of the Movants here, right?

10 A That is correct.

11 Q And he's also the portfolio manager of NexPoint Strategic
12 Opportunities Fund, another Movant; is that right?

13 A Yes. That is correct.

14 Q Okay. And I think you testified earlier that each of
15 these Funds has a board. Is that right?

16 A That is correct.

17 Q But the boards don't make investment decisions for the
18 Funds, do they?

19 A They do not. They have delegated that authority.

20 Q And that authority to make investment decisions is
21 delegated to the Advisors; is that right?

22 A Yes.

23 Q Okay. And none of the boards of the Funds who are Movants
24 here adopted any resolution authorizing the Funds to file this
25 motion; is that right?

1 A To my knowledge, that is correct.

2 Q And in fact, the boards were not required to approve the
3 filing of this motion, correct?

4 A I'm not -- I believe that's a legal question, but to my
5 knowledge, there was not a requirement of the board to -- or,
6 to adopt a resolution for that.

7 Q Okay. Let's talk a little bit about your background. I
8 think you testified that you're the executive vice president
9 at NexPoint Advisors, one of the Movants. Is that right?

10 A That's right.

11 Q Who's the president of NexPoint Advisors, LP?

12 A Mr. Dondero.

13 Q And you report directly to him; is that right?

14 A I do.

15 Q You're also the executive vice president of Fund Advisors,
16 another Movant; is that right?

17 A Correct.

18 Q And Mr. Dondero is the president of Fund Advisors; is that
19 right?

20 A He is not. There is no president of Fund Advisors. But
21 he -- yeah.

22 Q You're the president of another entity called NexPoint
23 Securities; is that right?

24 A That's correct.

25 Q And you're also the executive vice president of the 11 or

1 12 funds that are managed by the Advisors here, right?

2 A Yes. That is correct.

3 Q Okay. You've been working for Highland Capital Management
4 or other Highland-related entities for a little more than a
5 decade; is that right?

6 A That's correct. Since June 2010.

7 Q Okay. Now, you don't personally make any investment
8 decisions for -- for the Funds. Is that right?

9 A That's correct.

10 Q And you don't hold yourself out as an investment manager,
11 do you?

12 A I do not.

13 Q And you've never worked for a CLO, have you?

14 A Never worked for a -- for a C -- employed by a CLO.
15 Worked on accounting, various other aspects, but never worked
16 for a CLO.

17 Q Okay. You referred earlier to the declaration that you've
18 submitted in support of the motion. Do you remember that?

19 A I do.

20 Q I've got an assistant on the line here.

21 MR. MORRIS: Ms. Cantey, can we put up onto the
22 screen Debtor's Exhibit C, which I believe was Mr. Norris's
23 declaration? And if we could go to Page 12 of 26. Oh, all
24 right.

25 BY MR. MORRIS:

1 Q And, again, Mr. Norris, as we did in the deposition
2 yesterday, I'll remind you of the difficulty of doing a
3 virtual examination. And if at any time I ask you a question
4 about your declaration that prompts you to think you need to
5 see another portion of the declaration, will you let me know
6 that?

7 A Yes, I will.

8 Q Okay. Because I'm not here to test your memory. I'm just
9 here to ask you certain questions. So please let me know if
10 you need to see something that's not on the screen itself.

11 You didn't write any portion of this declaration; is that
12 right?

13 A I did not.

14 Q And you didn't provide any substantive comments to the
15 declaration as drafted because you agreed with -- with the
16 declaration as written by others; is that fair?

17 A Correct.

18 Q And all of the key information in your declaration was
19 supplied by NexPoint's management; isn't that right?

20 A Correct.

21 Q The individuals who provided the information that's in
22 your declaration include D.C. Sauter, Jason Post, Mr. Dondero,
23 and outside counsel at K&L Gates; is that right?

24 A Correct.

25 Q And Mr. Sauter is in-house counsel at the Advisors; is

1 that right?

2 A That is right.

3 Q And Mr. Post is the chief compliance officer at NexPoint;
4 is that right?

5 A That's correct.

6 Q The whole idea for this motion initiated with Mr. Dondero;
7 isn't that right?

8 A The concern, yes, the concern originated, and his concern
9 was voiced to our legal and compliance team.

10 Q Okay.

11 MR. MORRIS: Can we take the declaration down for --
12 oh, actually, no, I'm sorry, leave it there, and let's talk
13 about Exhibit B. Now we can all see it. If you can scroll
14 down to Exhibit B, please. Okay.

15 BY MR. MORRIS:

16 Q This page is attached to your declaration, right?

17 A That's correct.

18 Q And this page is intended to show the percentage of
19 preferred shares owned by each of the Movant Funds and the 15
20 different CLOs, right?

21 A That's right.

22 Q And the Debtor is the portfolio manager for each of these
23 CLOs; is that right?

24 A Yes.

25 Q And it's your understanding that the Debtor's management

1 of the CLOs on this page is governed by written agreements
2 between the Debtor and each of the CLOs, right?

3 A Yes.

4 Q None of the Movants are parties to the agreements between
5 the Debtor and each of the CLOs pursuant to which the Debtor
6 serves as portfolio manager; is that correct?

7 A I believe that is correct. One, I think, important --
8 even though they're not subject to the agreement, they are the
9 -- they have the economic ownership of each of these CLOs.

10 Q But they're not party to the agreement; is that right?

11 A Not that I'm aware of.

12 Q Okay. And in preparing for this motion and preparing for
13 your testimony, you didn't personally review any of the
14 agreements between the Debtor and any of the CLOs listed on
15 this page, right?

16 A No. I relied on legal counsel for that review.

17 Q Okay. And, but even though you didn't review the
18 agreements, it's your understanding that among the
19 responsibilities that the Debtor has as the portfolio manager
20 is buying and selling assets on behalf of the CLOs; is that
21 right?

22 A Yes. And I believe I specifically stated in my statement,
23 if you want to turn to it, what I (audio gap) to regarding the
24 CLOs' duties under the agreements.

25 Q Okay. It's your understanding, in fact, that nobody other

1 than the Debtor has the right or the authority to buy and sell
2 assets on behalf of the CLOs listed on Exhibit B, correct?

3 A That's my understanding.

4 Q Okay. And it's also your understanding, your specific
5 understanding, that holders of preferred shares do not make
6 investment decisions on behalf of the CLO; is that right?

7 A Correct.

8 Q And that's something that the Advisors knew when they
9 decided to invest in the CLOs on behalf of the Movant Funds;
10 is that fair?

11 A That's right. And at that time, the knowledge in the
12 purchase was with Highland Capital Management, LP and the
13 portfolio management team at that time.

14 Q And it's still with Highland Capital Management, LP; isn't
15 that right?

16 A That's correct. I'm not sure that the portfolio
17 management team looks the same, but it was HCMLP.

18 Q Okay. Let's just look at this document for a second. The
19 first column has the list of the CLOs in which the Movant
20 Funds have invested; is that right?

21 A Correct.

22 Q And the second column, HIF, that stands for Highland
23 Income Fund; is that right?

24 A Yes, sir.

25 Q And Highland Income Fund is one of the Funds who are the

1 Movants here, right?

2 A That is correct.

3 Q And the percentages below that show the percentage of the
4 preference shares of each of the CLOs that that particular
5 fund holds; is that right?

6 A That's right.

7 Q And then the third column relates to NexPoint Strategic
8 Opportunities Fund, one of the Movants here; is that right?

9 A That's correct.

10 Q And the next column, the fourth column, relates to
11 NexPoint Capital, Inc.'s holding of preference shares in the
12 15 CLOs, right?

13 A That's right.

14 Q So, NexPoint Capital doesn't hold any preference shares in
15 any of the CLOs except for a less-than-one-percent interest in
16 Grayson; am I reading that correctly?

17 A Yes, that's correct.

18 Q Okay. And then the last column is intended to show the
19 aggregate portion or percentage of preference shares that the
20 three moving Funds have in each of the 15 CLOs; is that right?

21 A Yes, that's right.

22 Q Okay. Am I reading this correctly that, for 12 of the 15
23 Funds, the moving Funds own less than a majority of the
24 outstanding preferred shares?

25 A Yes, that's correct.

1 Q And is it also -- am I also reading this correctly to
2 conclude that the moving Funds owned less than 70 percent of
3 every one of these CLOs; is that right?

4 A That's correct.

5 Q You don't know who owns the preferred shares in the CLOs
6 that are not owned by the Movant Funds, do you?

7 A I don't know any -- any specific owners.

8 Q And some of these CLOs still have notes that are
9 outstanding; is that right?

10 A Yes. Very small amounts as a percentage of the overall
11 CLO original capital structure, but yes, some still have small
12 --

13 Q So, --

14 A -- notes. Small amounts of notes.

15 Q Okay. I'm sorry to interrupt. If we looked at Exhibit A,
16 if we took the time to look at Exhibit A, Exhibit A would
17 show, for each of the 15 CLOs, which of those CLOs still had
18 notes outstanding and the amount of out -- the dollar value of
19 those notes. Is that right?

20 A That's correct.

21 Q Okay. And your understanding is that -- your
22 understanding -- withdrawn. The payment -- the distributions
23 from the CLOs are made pursuant to a waterfall; is that right?

24 A Yes, that's correct.

25 Q And your understanding of the waterfall process is that

1 the notes that are still outstanding at any CLO must be paid
2 -- must be paid in full before the preferred shares receive
3 any recovery; is that right?

4 A So, I would say that my understanding is slightly
5 different. It's going to be dependent on each indenture.
6 But, in general, interest payments are made to the debt
7 holders, and anything extra is then allocated to the equity.
8 But ultimate recovery, to your point, would be once those --
9 once the debt is paid off. And that's the critical thing
10 here, where the preference shares here now with most of these
11 CLOs almost all the way wound down, with the exception of a
12 small piece of debt. The equity owns the lion's share of the
13 economic interest of every one of these CLOs. And I think
14 that's important.

15 Q Okay. Some of the CLOs still have outstanding notes. Is
16 that right?

17 A Yes. As we discussed on -- Exhibit A will have the notes
18 that are -- that are remaining on those.

19 Q And you don't know who holds the notes in the other CLOs,
20 right?

21 A I don't.

22 Q The only holders of preferred shares that are pursuing
23 this motion are the three Funds managed by the Advisors,
24 right?

25 A In this motion, yes.

1 Q You're not aware of any holder of preferred shares
2 pursuing this motion other than the three Funds managed by the
3 Advisors, correct?

4 A No, I'm not aware of any others.

5 Q You didn't personally inform any holder of preferred
6 shares, other than the Funds that are the Movants, that this
7 motion would be filed, did you?

8 A No, I did not.

9 Q You're not aware of any steps taken by either of the
10 Advisors to provide notice to holders of preferred shares that
11 this motion was going to be filed, are you?

12 A I'm not, no.

13 Q And you're not aware of any attempt that was made to
14 obtain the consent of all of the holders of the preferred
15 shares to seek the relief sought in this motion, correct?

16 A That's correct.

17 Q You don't have any personal knowledge, personal knowledge,
18 as to whether any holder of preferred shares other than the
19 Funds managed by the Advisors wants the relief sought in the
20 motion, correct?

21 A Correct.

22 Q You don't have any personal knowledge as to whether any of
23 the CLOs that are subject to the contracts that you described
24 want the relief that's being requested in this motion, right?

25 A That's correct. I have not spoken or been involved at all

1 directly with the CLOs. I'm representing the Funds.

2 Q Okay. Now, two of the Funds, two of the three Movant
3 Funds, I believe you testified are publicly traded; is that
4 right?

5 A That's correct.

6 Q And that's the Highland Income Fund and the NexPoint
7 Strategic Opportunities Fund; is that right?

8 A That's right. That's right.

9 Q And because they are publicly-traded, the shareholders in
10 those two funds can sell their shares any time the market is
11 open; is that right?

12 A If they're willing to take the price that the market is
13 willing to give, yes.

14 Q Yes.

15 A Between market hours.

16 Q And if they -- if they don't like the way the assets that
17 are -- that the Funds have been invested, one of the things
18 they could do is simply sell their shares, right?

19 A Yes.

20 Q And the third fund, the shareholders in the third fund
21 have the right to sell out not on a public market but on a
22 quarterly basis; is that right?

23 A Correct.

24 Q That third Movant Fund is NexPoint Capital; do I have that
25 right?

1 A Correct.

2 Q So they also have the ability to exit if they don't like
3 management on a quarterly basis; is that right?

4 A Correct.

5 Q All right. Can we turn to Paragraph -- Paragraphs 8 and 9
6 of your declaration? Okay. Paragraph 8 describes a
7 transaction that's been referred to as OmniMax; is that right?

8 A Yes.

9 Q And Paragraph 9 refers to a transaction involving SSP
10 Holdings, LLC; do I have that right?

11 A That's correct.

12 Q Do you know what SSP stands for?

13 A See if we say it in there. SSP Holdings, LLC.

14 Q Right. Do you know what SSP stands for?

15 A I don't. Something Steel Products. I --

16 Q Okay. You don't need to guess. These are the only two
17 transactions that the Movants question; is that right?

18 A These transactions, as well as certain transactions around
19 Thanksgiving time.

20 Q Okay. We'll talk about those. But those transactions
21 about -- around Thanksgiving time aren't in your declaration,
22 are they?

23 A Not specifically mentioned by name.

24 Q Okay. Let's talk about the two that are mentioned by
25 name, Trussway and SSP. The Movants do not contend that

1 either transaction was the product of fraudulent conduct, do
2 they?

3 A No.

4 Q The Movants do not contend that the Debtor breached any
5 agreement by effectuating these transactions, do they?

6 A I don't believe so.

7 Q In fact, the Movants do not contend that the Debtor
8 violated any agreement at any time in the management of the
9 CLOs listed on Exhibit B; is that right?

10 A That's right.

11 Q The Movants don't even question the Debtor's business
12 judgment, only the results of the trans -- of these two
13 transactions. Is that right?

14 A That's right. And results is the key here and the
15 approach.

16 Q I see. And the reason the Movants do not question the
17 Debtor's business judgment is because you don't know what
18 factor or factors the Debtor considered in executing these
19 transactions, right?

20 A That's right. I can't look into the mind or know the
21 business judgment and the inputs that went into this. We do
22 know the outcomes. And to us, that's troubling, right, as the
23 owners of the lion's share or the majority or even significant
24 amounts of the economic ownership of the CLOs. And having
25 insight into those transactions, as mentioned in my statement,

1 really just trying to maximize recoveries for our Funds.

2 MR. MORRIS: Your Honor, I move to strike the portion
3 of his answer following that which was responsive to the
4 question.

5 THE COURT: All right. I grant that motion.

6 MR. MORRIS: Okay.

7 BY MR. MORRIS:

8 Q Sir, you never asked the Debtor what factors it considered
9 in making these trades, right?

10 A I did not.

11 Q And you have no reason to believe that anyone on behalf of
12 the Movants ever asked the Debtor why it executed these
13 trades, right?

14 A I don't have any knowledge. There could have been
15 somebody from -- from the Movants. But I did not.

16 Q Okay. On OmniMax, the Movants disagree with the price at
17 which the Debtor effectuated the trade, right?

18 A Correct.

19 Q And I believe there was a meeting of the boards of the
20 Funds back in August at which Mr. Seery appeared. Do I have
21 that right?

22 A I believe it was August, but he did appear.

23 Q And the purpose of the appearance was so that Mr. Seery
24 could give an update on the bankruptcy; is that right?

25 A That's correct, and on the services provided by Highland

1 Capital Management, LP to our Advisor. Advisors. They
2 provide various shared services.

3 Q And it was during that meeting that Mr. Seery forthrightly
4 told the boards the price at which he was planning to execute
5 the OmniMax transaction, correct?

6 A Correct.

7 Q The transaction hadn't yet occurred, right?

8 A I'm not sure if it had been finalized. He had a price,
9 and these -- these things are negotiated. This was, I
10 believe, a company in restructuring. So I don't know whether
11 it had been transacted or not.

12 Q Okay. The board didn't ask Mr. Seery not to execute the
13 transaction, did it?

14 A Not to my knowledge. The board wouldn't -- I don't think
15 the board would have that authority, either.

16 Q Okay. But it's here asking the Court to cause the Debtor
17 to pause in the execution of any trades in the CLOs; is that
18 right?

19 A I think the order speaks in that regard.

20 Q Yeah. Okay. Let's talk about the SSP transaction for a
21 moment. It's your understanding that Trussway Holdings, LLC
22 owned a majority interest in SSP Holdings, LLC, right? That's
23 in Paragraph 9.

24 A Yes. The statement in Paragraph 9 is what I believe is
25 correct.

1 Q Okay. And it's also your understanding that Trussway is a
2 wholly-owned subsi... I'm sorry, that SSP Holdings is a
3 wholly-owned subsidiary -- withdrawn. It's also your
4 understanding that Trussway is a wholly-owned subsidiary of
5 the Debtor, right?

6 A Yes.

7 Q But Trussway is not a debtor in bankruptcy, right?

8 A I'm not sure.

9 Q Okay. You have no reason to believe that; is that fair?

10 A That it's not a debtor in bankruptcy? That Trussway is
11 not in bankruptcy itself?

12 Q Correct.

13 A Yeah. I have no knowledge of Trussway's situation.

14 Q Okay. But you -- but according to your declaration that
15 was prepared by the Advisors' management team, Trussway and
16 not the Debtor owned SSP Holdings, LLC. Is that right?

17 A I'm looking here at the statement just to make sure.

18 Q Sure.

19 (Pause.)

20 A I -- again, I -- the statement is correct, and I believe
21 speaks for itself regarding entity ownership.

22 Q The only things you know about the SSP transaction are,
23 one, that you believe it was made without a formal bidding
24 process; and two, that it resulted in a \$10 million loss. Is
25 that right?

1 A Correct.

2 Q Okay. But, again, neither you, or to the best of your
3 knowledge, anybody at Advisors, ever spoke with anybody at the
4 Debtor about the circumstances concerning either of the
5 transactions, right?

6 A I don't know the conversations that were had at anyone
7 else from our Advisors, but this is the knowledge that -- that
8 I have.

9 Q Okay. And it's the only knowledge you have, right? You
10 don't know anything about the SSP transaction other than those
11 two facts, right?

12 A Correct.

13 Q In fact, I think you testified yesterday that you've been
14 very remote from the SSP transaction, right?

15 A That's correct.

16 Q And that it's not a transaction that you have much
17 knowledge on. Fair?

18 A Fair.

19 Q Let's just talk briefly about the transactions that
20 occurred (garbled) Thanksgiving. They're not specifically
21 referred to in your declaration; is that right?

22 A That's correct.

23 Q And you have no knowledge about any transaction that Mr.
24 Seery wanted to execute around Thanksgiving; is that right?

25 A I know there were transactions and there were concerns

1 from our management team, but I'm not aware of what the
2 transactions were.

3 Q In fact, you can't even identify the assets that Mr. Seery
4 wanted to sell around Thanksgiving, or at least you couldn't
5 at the time of your deposition yesterday. Is that right?

6 A That's correct.

7 Q And you have no knowledge as to why Mr. Seery wanted to
8 make those particular trades at around Thanksgiving?

9 A No, I don't.

10 Q And in fact, you don't even know if the transactions that
11 Mr. Seery wanted to close around Thanksgiving ever in fact
12 closed. Is that fair?

13 A Correct.

14 Q Okay. Let's just -- let's just finish up with a few
15 questions about the boards.

16 MR. MORRIS: Ms. Cantey, can we put up Debtor's
17 Exhibit EEEE? Four E's, Your Honor. Thank you.

18 BY MR. MORRIS:

19 Q This particular page identifies the directors for each of
20 the three Movant Funds; is that right?

21 A Let me take a look and confirm. (Pause.) Yes. That
22 looks correct.

23 Q Okay. And this was prepared by the Movants; is that
24 right?

25 A I'm not sure who prepared it.

1 Q Okay. To the best of your knowledge, does this document
2 accurately reflect the composition of the boards of each of
3 the three Movant Funds?

4 A Yes, it does.

5 Q Okay. John Honis, I think you mentioned him earlier.
6 He's on all three boards. Is that right?

7 A That's correct. And the reason being we have a unitary
8 board structure, so -- which is very common in '40 Act Fund
9 land, where the board sits, for efficiency purposes, on
10 multiple fund boards, and there's a lot of economies of scale
11 from an operating standpoint. So, yes, they sit on multiple
12 boards.

13 Q Okay. And for purposes of the '40 Act, Mr. Honis has been
14 deemed to be an interested trustee. Is that right?

15 A That's correct.

16 Q Okay. But you don't specifically know what facts caused
17 that designation; you only know that the designation exists.
18 Right?

19 A That's right. And I know they are disclosed in the proxy
20 -- or, in the -- the relative filings related to those Funds.

21 Q Okay. Three other people are common to all three of the
22 Movant Funds. I think you've got Dr. Froehlich, Ethan Powell,
23 --

24 A Froehlich.

25 Q Froehlich. Ethan Powell and Bryan Ward. Right?

1 A That is correct.

2 Q Okay. All three of those individuals actually serve on
3 the 11 or 12 boards that you mentioned earlier that are
4 managed by the Advisors, right?

5 A Yes, that is correct.

6 Q And they're the same Funds for which you serve as an
7 executive vice president, right?

8 A Yes. That's correct.

9 Q So, for all of the Funds that are managed by the Advisors,
10 you serve as executive vice president and all four of these
11 directors -- trustees serve as trustees on the boards, right?

12 A Yes, that's correct.

13 Q Okay. In exchange for serving on all of these boards, the
14 three individuals -- Dr. Froehlich, Mr. Ward, and Mr. Powell
15 -- each receive \$150,000 a year for services across the
16 Highland complex; is that right?

17 A That's correct.

18 Q Dr. Froehlich has been serving as a board member across
19 the Highland complex for seven or eight years now; is that
20 right?

21 A That's correct.

22 Q Mr. --

23 A I believe it's about seven or eight years.

24 Q And Mr. Powell, he actually was employed by Highland or
25 related entities from about 2007 or 2008 until 2015, right?

1 A That's correct.

2 Q And Mr. Ward, the third of the independent trustees, he's
3 been serving as a board member on various Highland-related
4 funds on a continuous basis since about 2004. Do I have that
5 right?

6 A Yeah, I believe that's correct.

7 Q Okay. Just a couple of final questions. You would agree,
8 would you not, sir, that portfolio managers have an obligation
9 to effectuate transactions concerning the assets that they
10 manage based on their business judgment?

11 A Yes. And in accordance with whatever governing documents
12 govern the fund structure.

13 Q And you would personally expect a portfolio manager to
14 execute a transaction that he or she reasonably believes in
15 good faith and in their business judgment would maximize value
16 for the CLO, even if the CLO did not need cash at that
17 particular time. Is that right?

18 A I think it would come down to the governing documents.
19 And I think what you're getting at here is, in this instance,
20 these sales and the intent of the portfolio manager. And our
21 view, again, is -- and the request for the motion is simply
22 there is a lot at play here. Several negotiations. And in
23 order to maximize returns, simply asking for a pause on
24 transactions.

25 Q All right. Let me -- let me ask the question again, and I

1 would ask that you please listen carefully to the question.
2 You would expect a portfolio manager would execute a
3 transaction that he or she believes maximizes value, even if
4 the CLO didn't need cash at that particular moment in time.
5 Correct?

6 A Yeah. As long as that is maximizing value for the
7 stakeholders, and in the instance of a CLO, the economic
8 interest is owned by the equity holders. So, to their
9 benefit, yes, that -- that would be the idea.

10 MR. MORRIS: Your Honor, I have no further questions.

11 THE COURT: Any redirect, Mr. Wright?

12 MR. WRIGHT: Only briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. WRIGHT:

15 Q Mr. Norris, I think you were asked at one point about how
16 long you'd been working for Highland Capital Management, which
17 there's -- there's Highland Capital Management Fund Advisors
18 and then there's Highland Capital Management, LP, Debtor. And
19 I wanted to give you an opportunity to just explain when and
20 what years you worked for HCMLP and then when and what years
21 you worked for NexPoint Advisors or Highland Capital
22 Management Fund Advisors.

23 A Yes. From June 2010, I was employed by Highland Capital
24 Management, LP, until July or August of 2012, at which time I
25 was then hired by Highland Capital Management Fund Advisors,

Norris - Redirect

60

1 not HCML -- no longer employed by HCMLP, and have worked since
2 that time for HCMFA and NexPoint Advisors and not for the
3 Debtor, HCMLP.

4 Q Okay. So -- and I'm sorry if I missed a year, but it's
5 been about ten years since you had worked for HCMLP or been an
6 employee of HCMLP, correct?

7 A Yeah. It's been over eight years since I have left
8 employment by HCMLP. Ten and a half years ago, I started
9 working for HCMLP, and then two years after that transitioned
10 away and started working for the Advisors that are part of
11 this motion.

12 Q Thank you for clarifying.

13 MR. WRIGHT: Your Honor, I hope -- you directed us to
14 have a witness here today, and so we do. And I know that you
15 had asked me at the last hearing some questions about the
16 involvement of people at HCMLP, which I tried to address with
17 Mr. Norris in my direct. But I, you know, I do want to make
18 sure that we've answered any questions that you have.

19 THE COURT: All right. Yes, that's fine. Are you
20 -- does that conclude your redirect?

21 MR. WRIGHT: It does, Your Honor.

22 THE COURT: Any recross, Mr. Morris, on that
23 redirect?

24 MR. MORRIS: No, thank you, Your Honor.

25 THE COURT: All right, then. That concludes the

1 testimony of Mr. Norris.

2 Any other evidence, Mr. Wright?

3 MR. WRIGHT: I do not, Your Honor, although I guess I
4 would offer the Exhibit A and Exhibit B to Mr. Norris's
5 declaration --

6 THE COURT: Any objection to that?

7 MR. WRIGHT: -- into evidence.

8 MR. MORRIS: No, Your Honor.

9 THE COURT: All right. Those are admitted.

10 (Movants' Exhibits A and B are received into evidence.)

11 THE COURT: All right. Well, Mr. Morris, did you
12 want to put on any evidence?

13 MR. MORRIS: Does the -- do the Movants rest, Your
14 Honor?

15 THE COURT: I understood that they rest. Correct,
16 Mr. Wright?

17 MR. WRIGHT: That's correct, Your Honor.

18 MR. MORRIS: Your Honor, I would move, effectively,
19 for a directed verdict here. The Movants have the burden of
20 establishing a *prima facie* case to entitlement to the relief
21 that's been requested, and they have failed to meet that
22 burden. The Debtor has -- we -- the undisputed facts are the
23 Debtor has the contractual right, and indeed, the obligation,
24 to serve as the portfolio manager of the CLOs pursuant to
25 written agreements.

1 The Movants are not parties to those agreements. The
2 testimony is undisputed that there are many holders of
3 preferred shares and notes that have had no notice of this
4 proceeding that will undoubtedly be impacted by the tying of
5 the hands of the portfolio manager. The chart that was
6 attached as Exhibit B expressly shows just what a large
7 portion of interested parties and people who would be affected
8 by this motion are not -- they didn't get notice. There was
9 no attempt to get notice. There was no attempt to get their
10 consent. All of that testimony is now in the record, and I
11 think due process alone would prevent the entry or even the
12 consideration of an order of this type.

13 There is nothing improper that's been alleged. There is
14 no -- there is no allegation of fraud. There is no allegation
15 of breach of contract of any kind. There's not even a
16 question of business judgment. The Movants didn't even do
17 their diligence to ask the Debtor why they made these
18 transactions. There is nothing in the record that shows that
19 the Debtor, as the portfolio manager of the CLOs, did anything
20 improper.

21 The only thing that the Movants care about is that they
22 don't like the results in two particular trades. I don't
23 think that that meets their burden of persuasion that the
24 Court should enter an order of this type, and I would like to
25 relieve Mr. Seery of the burden, frankly, and the Court, of

1 having to put on testimony to justify transactions that really
2 aren't even being questioned, Your Honor.

3 So the Debtor would respectfully move for the denial of
4 the motion and the relief sought therein.

5 THE COURT: All right. Your request for a directed
6 verdict, something equivalent to a directed verdict here, is
7 granted. I agree that the Movant has wholly failed to meet
8 its burden of proof here today to show the Court, persuade the
9 Court that, as Mr. Morris said, I should essentially tie the
10 hands of the Debtor as a portfolio manager here, as stated.
11 Nothing improper has been alleged. There has been no showing
12 of a statutory right here, or a contractual right here, on the
13 part of the Movants.

14 I am -- I'm utterly dumbfounded, really. I agree with the
15 -- I was going to say innuendo; not really innuendo -- I agree
16 with part of the theme, I think, asserted by the Debtor here
17 today that this is Mr. Dondero, through different entities,
18 through a different motion. I feel like he sidestepped the
19 requirement that I stated last week that if we had a contested
20 hearing on his motion, Dondero's motion, that I was going to
21 require Mr. Dondero to testify. He apparently worked out an
22 eleventh hour agreement with the Debtor on his motion to avoid
23 that. But, again, these so-called CLO Motions very clearly,
24 very clearly, in this Court's view, were pursued at his sole
25 direction here.

1 This is almost Rule 11 frivolous to me. You know, we're
2 -- we didn't have a Rule 11 motion filed, and, you know, I
3 guess, frankly, I'm glad that a week before the holidays begin
4 we don't have that, but that's how bad I think it was, Mr.
5 Wright and Mr. Norris. This is a very, very frivolous motion.
6 Again, no statutory basis for it. No contractual basis. You
7 know, you didn't even walk me through the provisions of the
8 contracts. I guess that would have been fruitless. But you
9 haven't even shown something equitable, some lack of
10 reasonable business judgment.

11 Bluntly, don't waste my time with this kind of thing
12 again. You wasted my time. We have 70 people on the video.
13 Utter waste of time.

14 All right. So, motion is denied. Mr. Morris, please
15 upload an order.

16 MR. MORRIS: Thank you, Your Honor.

17 THE COURT: All right. Do we have any other business
18 to accomplish today?

19 MR. POMERANTZ: I don't think so, Your Honor. I know
20 we will see you tomorrow in connection with Mr. Daugherty's
21 relief from stay motion.

22 THE COURT: Well, yeah, we do have that. Okay. We
23 will see you tomorrow. We stand adjourned.

24 MR. CLEMENTE: Thank you, Your Honor.

25 MR. MORRIS: Thank you, Your Honor.

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THE CLERK: All rise.

(Proceedings concluded at 3:05 p.m.)

--oOo--

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathy Rehling

12/17/2020

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

Date

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EXHIBIT 2




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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed January 9, 2020


United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

Related to Docket Nos. 7 & 259

**ORDER APPROVING SETTLEMENT WITH OFFICIAL COMMITTEE OF
UNSECURED CREDITORS REGARDING GOVERNANCE OF THE DEBTOR
AND PROCEDURES FOR OPERATIONS IN THE ORDINARY COURSE**

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the "Motion"),² filed by the above-captioned debtor and debtor in possession

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



(the “Debtor”); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein, and the United States Trustee’s objection to the Motion is OVERRULED.

2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) implementing the Document Production Protocol; and (ii) implementing the Protocols.

3. The Debtor is authorized (A) to compensate the Independent Directors for their services by paying each Independent Director a monthly retainer of (i) \$60,000 for each of the first three months, (ii) \$50,000 for each of the next three months, and (iii) \$30,000 for each of the following six months, provided that the parties will re-visit the director compensation after the sixth month and (B) to reimburse each Independent Director for all reasonable travel or other expenses, including expenses of counsel, incurred by such Independent Director in connection with its service as an Independent Director in accordance with the Debtor’s expense reimbursement policy as in effect from time to time.

4. The Debtor is authorized to guarantee Strand's obligations to indemnify each Independent Director pursuant to the terms of the Indemnification Agreements entered into by Strand with each Independent Director on the date hereof.

5. The Debtor is authorized to purchase an insurance policy to cover the Independent Directors.

6. All of the rights and obligations of the Debtor referred to in paragraphs 3 and 4 hereof shall be afforded administrative expense priority under 11 U.S.C. § 503(b).

7. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.

8. Pursuant to the Term Sheet, Mr. James Dondero will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero shall resign immediately upon such determination.

9. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.

10. No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent

Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

11. Nothing in the Protocols, the Term Sheet or this Order shall affect or impair Jefferies LLC's rights under its Prime Brokerage Customer Agreements with the Debtor and non-debtor Highland Select Equity Master Fund, L.P., or any of their affiliates, including, but not limited to, Jefferies LLC's rights of termination, liquidation and netting in accordance with the terms of the Prime Brokerage Customer Agreements or, to the extent applicable, under the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code. The Debtor shall not conduct any transactions or cause any transactions to be conducted in or relating to the Jefferies LLC accounts without the express consent and cooperation of Jefferies LLC or, in the event that Jefferies withholds consent, as otherwise ordered by the Court. For the avoidance of doubt, Jefferies LLC shall not be deemed to have waived any rights under the Prime Brokerage Customer Agreements or, to the extent applicable, the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code, and shall be entitled to take all actions authorized therein without further order of the Court

12. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

END OF ORDER

EXHIBIT 3

Highland Capital Management, L.P.

Preliminary Term Sheet

This term sheet (“Term Sheet”) outlines the principal terms of a proposed settlement between Highland Capital Management, L.P. (the “Debtor”) and the Official Committee of Unsecured Creditors (the “Committee”) in the chapter 11 case captioned In re Highland Capital Mgm’t, L.P, Case No. 19-34054 (SGJ) (the “Chapter 11 Case”), pending in the Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”), to resolve a good faith dispute between the parties related to the Debtor’s corporate governance, and specifically, the Committee’s various objections to certain relief being sought by the Debtors in the Chapter 11 Case [Del. Docket No. 125]. This Term Sheet shall be subject to approval by the Bankruptcy Court.

Topic	Proposed Terms
Parties	<p>Highland Capital Management, L.P. (the “<u>Debtor</u>”).</p> <p>The Official Committee of Unsecured Creditors of Highland Capital Management, L.P. (the “<u>Committee</u>”).</p>
Independent Directors	<p>The Debtor’s general partner, Strand Advisors, Inc., will appoint the following three (3) independent directors (the “<u>Independent Directors</u>”): James Seery, John Dubel, and Judge Russell Nelms. The Independent Directors will be granted exclusive control over the Debtor and its operations. Among other things, the Independent Directors shall conduct a review of all current employees as soon as practicable following the Independent Directors’ appointment, determine whether and which employees should be subject to a key employee retention plan and/or key employee incentive plan and, if applicable, propose plan(s) covering such employees. The appointment and powers of the Independent Directors and the corporate governance structure shall be pursuant to the documents attached hereto as <u>Exhibit A</u>, which documents shall be satisfactory to the Committee. Once appointed, the Independent Directors (i) cannot be removed without the Committee’s written consent or Order of the Court, and (ii) may be removed and replaced at the Committee’s direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the Independent Directors, to object to such removal and replacement).</p> <p>The Independent Directors shall be compensated in a manner to be determined with an understanding that the</p>

	<p>source of funding, whether directly or via reimbursement, will be the Debtor.</p> <p>As soon as practicable after their appointments, the Independent Directors shall, in consultation with the Committee, determine whether an interim Chief Executive Officer (the “<u>CEO</u>”) should be appointed for the Debtor. If the Independent Directors determine that appointment of a CEO is appropriate, the Independent Directors shall appoint a CEO acceptable to the Committee as soon as practicable, which may be one of the Independent Directors. Once appointed, the CEO cannot be removed without the Committee’s written consent or Order of the Court.</p> <p>The Committee shall have regular, direct access to the Independent Directors, <u>provided, however</u> that (1) if the communications include FTI Consulting Inc. (“<u>FTI</u>”), Development Specialists Inc. (“<u>DSI</u>”) shall also participate in such communications; and (2) if the communications include counsel, then either Debtor’s counsel or, if retained, counsel to the Independent Directors shall also participate in such communications.</p>
<p>Role of Mr. James Dondero</p>	<p>Upon approval of this Term Sheet by the Bankruptcy Court, Mr. Dondero will (1) resign from his position as a Board of Director of Strand Advisors, Inc., (2) resign as an officer of Strand Advisors, Inc., and (3) resign as President and CEO of the Debtor, and (4) will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero’s responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero’s role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero agrees to resign immediately upon such determination. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.</p>
<p>CRO</p>	<p>DSI shall, subject to approval of the Bankruptcy Court, be retained as chief restructuring officer (“<u>CRO</u>”) to the</p>

	<p>Debtor and report to and be directed by the Independent Directors and, if and once appointed, the CEO. The retention and scope of duties of DSI shall be pursuant to the Further Amended Retention Agreement, attached hereto as <u>Exhibit B</u>.</p> <p>DSI and all other Debtor professionals shall serve at the direction of the CEO, if any, and the Independent Directors.</p>
<p>Estate Claims</p>	<p>The Committee is granted standing to pursue any and all estate claims and causes of action against Mr. Dondero, Mr. Okada, other insiders of the Debtor, and each of the Related Entities, including any promissory notes held by any of the foregoing (collectively, the “<u>Estate Claims</u>”); provided, however, that the term Estate Claims will not include any estate claim or cause of action against any then-current employee of the Debtor other than Mr. Dondero.</p>
<p>Document Management, Preservation, and Production</p>	<p>The Debtor shall be subject to and comply with the document management, preservation, and production requirements attached hereto as <u>Exhibit C</u>, which requirements cannot be modified without the consent of the Committee or Court order (the “<u>Document Production Protocol</u>”).</p> <p>Solely with respect to the investigation and pursuit of Estate Claims, the document production protocol will acknowledge that the Committee will have access to the privileged documents and communications that are within the Debtor’s possession, custody, or control (“<u>Shared Privilege</u>”).</p> <p>With respect to determining if any particular document is subject to the Shared Privilege, the following process shall be followed: (i) the Committee will request documents from the Debtor, (ii) the Debtor shall log all documents requested but withheld on the basis of privilege, (iii) the Debtor shall not withhold documents it understands to be subject to the Shared Privilege; (iv) the Committee will identify each additional document on the log that the Committee believes is subject to the Shared Privilege, and (v) a special master or other third party neutral agreed to by the Committee and the Debtor shall make a determination if such documents are subject to the Shared Privilege. The Committee further agrees that the production of any particular document by</p>

	the Debtor under this process will not be used as a basis for a claim of subject matter waiver.
Reporting Requirements	The Debtor shall be subject to and comply with the reporting requirements attached hereto as Exhibit D , which reporting requirements cannot be modified without the consent of the Committee or Court order (the “ Reporting Requirements ”).
Plan Exclusivity	The Independent Directors may elect to waive the Debtor’s exclusive right to file a plan under section 1121 of the Bankruptcy Code.
Operating Protocols	The Debtor shall comply with the operating protocols set forth in Exhibit D hereto, regarding the Debtor’s operation in the ordinary course of business, which protocols cannot be modified without the consent of the Committee or Court order.
Reservation of Rights	This agreement is without prejudice to the Committee’s rights to, among other things, seek the appointment of a trustee or examiner at a later date. Nothing herein shall constitute or be construed as a waiver of any right of the Debtor or any other party in interest to contest the appointment of a trustee or examiner, and all such rights are expressly reserved.

Exhibit A

Debtor's Corporate Governance Documents

WRITTEN CONSENT OF SOLE STOCKHOLDER AND DIRECTOR

OF

STRAND ADVISORS, INC.

January 9, 2020

Pursuant to the provisions of the General Corporation Law of the State of Delaware (the “DGCL”) and consistent with the provisions of the Certificate of Incorporation (the “Certificate”) and Bylaws (the “Bylaws”) of Strand Advisors, Inc., a Delaware corporation (the “Company”), the undersigned, being the holder of all of the issued and outstanding shares of common stock, par value \$0.01 per share, of the Company and the sole director of the Company (the “Stockholder”), acting by written consent without a meeting pursuant to Section 228 of the DGCL and Article IV, Section 6, and Article XII of the Bylaws, does hereby consent to the adoption of the following resolutions and to the taking of the actions contemplated thereby, in each case with the same force and effect as if presented to and adopted at a meeting of the stockholders:

I. AMENDMENT OF BYLAWS

WHEREAS, it is acknowledged that the Board of Directors of the Company (the “Board”) has heretofore been fixed at one (1) and that the Board currently consists of James Dondero;

WHEREAS, pursuant to Article XII of the Bylaws, the Stockholder wishes to amend the Bylaws in the manner set forth on **Appendix A** hereto (the “Bylaws Amendment”) to increase the size of the Board from one (1) to three (3) directors, and to add certain provisions respecting director qualifications and the removal of directors; and

NOW, THEREFORE, BE IT RESOLVED, that the Bylaws Amendment is hereby authorized and approved, and the Board is increased from one (1) to three (3) directors;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as may be required to effectuate the Bylaws Amendment; and

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate such Bylaws Amendment is hereby authorized and affirmed.

II. ELECTION OF DIRECTORS

WHEREAS, the Stockholder desires to appoint James Seery, John Dubel, and Russell Nelms to the Board and desires that such individuals constitute the whole Board;

NOW, THEREFORE, BE IT RESOLVED, that James Seery, John Dubel, and Russell Nelms, having consented to act as such, be, and each of them hereby is, appointed as a director, to serve as a director of the Company and to hold such office until such director’s respective successor shall have been duly elected or appointed and shall qualify, or until such director’s death, resignation or removal;

RESOLVED FURTHER, that any officer of the Company is authorized to take any such actions as

may be required to effectuate the appointment of the foregoing directors, including executing an indemnification agreement in favor of such directors in substantially the form attached hereto as **Appendix B** (each, an “Indemnification Agreement”);

RESOLVED FURTHER, that any action taken by any officer of the Company on or prior to the date hereof to effectuate the appointment of such directors, including the execution of an Indemnification Agreement, is hereby authorized and affirmed.

RESOLVED FURTHER, that James Dondero and any other directors of the Company are hereby removed as directors of the Company;

RESOLVED FURTHER, that the directors appointed pursuant to these resolutions shall, pursuant to the terms of the Bylaws, appoint a Chairman of the Board.

III. STIPULATION WITH THE BANKRUPTCY COURT

WHEREAS, on October 16, 2019, Highland Capital Management, L.P. (“HCMLP”) filed for chapter 11 bankruptcy protection in the Bankruptcy Court for the District of Delaware, Case No. 19-12239 (CSS) (the “Bankruptcy Case”);

WHEREAS, the Company is the general partner for HCMLP;

WHEREAS, the Bankruptcy Case was transferred to the Bankruptcy Court for the Northern District of Texas, Case No. 19-34054-sgj11 (the “Texas Court”) by order of the Bankruptcy Court for the District of Delaware on December 4, 2019;

WHEREAS, the Company and the Stockholder wish to enter into a stipulation (the “Stipulation”) with HCMLP and the Official Unsecured Creditors Committee appointed in the Bankruptcy Case (the “Committee”), such Stipulation to be approved by the Texas Court, whereby the Stockholder will agree (a) not to transfer or assign his shares in the Company or exercise the voting power of such shares to remove any member of the Board appointed pursuant to these resolutions or further change the authorized number of directors from three (3) directors; (b) to exercise the voting power of his shares so as to cause each member of the Board appointed by these resolutions to be re-elected upon the expiration of his or her term; (c) upon the death, disability, or resignation of a member of the Board, will exercise the voting power of such shares so as to cause the resulting vacancy to be filled by a successor that is both independent and (i) acceptable to the Stockholder and the Committee or (ii) selected by the remaining members of the Board; and (d) not take any action or exercise the voting power of such shares in any way that is inconsistent with the term sheet agreed to by HCMLP and the Committee and any order of the Texas Court approving such agreement and compromise between HCMLP and the Committee;

WHEREAS, for purposes of the Stipulation, “independent” would exclude the Stockholder, any affiliate of the Stockholder, and any member of management of the Company; and

WHEREAS, it is in the intent of the parties that the Stipulation will no longer be effective or bind the Company or the Stockholder following the termination of the Bankruptcy Case.

NOW, THEREFORE, BE IT RESOLVED, that the Company is authorized to take such actions as may be necessary to enter into and effectuate the Stipulation in the manner and on the terms set forth above, including, but not limited to, further amending the Certificate, Bylaws, or any other corporate governance documents; and

RESOLVED FURTHER, that Scott Ellington, as an officer of the Company, is authorized to take any such actions as may be required to enter into and effectuate the Stipulation in the manner set forth herein; and

RESOLVED FURTHER, that any action taken by Scott Ellington or any other officer of the Company on or prior to the date hereof to effectuate such Stipulation is hereby authorized and affirmed.

[Signature pages follow.]

IN WITNESS WHEREOF, the undersigned has executed this Written Consent as of the respective date and year first appearing above.

STOCKHOLDER:

James Dondero

[Signature Page to Written Consent of Sole Stockholder of Strand Advisors, Inc.]

**First Amendment to Bylaws of
Strand Advisors, Inc.**

Strand Advisors, Inc. (the “Company”), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify that the Company’s sole stockholder, acting by written consent without a meeting, resolved to amend the Company’s Bylaws (the “Bylaws”) as follows:

1. Article III, Section 2, of the Bylaws is hereby deleted in its entirety and replaced with the following:

Section 2. Number of Directors. The number of directors which shall constitute the whole Board shall be three (3).

2. Article III, Section 5, of the Bylaws is hereby deleted in its entirety and replaced with the following:

Section 5. Director Qualifications. Each director appointed to serve on the Board shall (A) (i) be an independent director, (ii) not be affiliated with the corporation’s stockholders, and (iii) not be an officer of the corporation; and (B) have been (x) nominated by the official committee of unsecured creditors (the “Committee”) appointed in the chapter 11 bankruptcy of Highland Capital Management, L.P. (the “Debtor”) currently pending in the United States Bankruptcy Court for the Northern District of Texas (the “Court”), Case No. 19-34054-sgj11 and reasonably acceptable to the stockholders; (y) nominated by the stockholders and acceptable to the Committee; or (z) selected by the duly appointed independent directors.

3. The following shall be added as Section 6 to Article III of the Bylaws:

Section 6. Removal of Directors. Once appointed, the independent directors (i) cannot be removed without the Committee’s written consent or Order of the Court, and (ii) may be removed and replaced at the Committee’s direction upon approval of the Court (subject in all respects to the right of any party in interest, including the Debtor and the independent directors, to object to such removal and replacement).

Except as expressly amended hereby, the terms of the Company’s Bylaws shall remain in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the Company has caused this amendment to be signed this 9th day of January, 2020.

STRAND ADVISORS, INC.

By: Scott Ellington
Its: Secretary

INSERT STRAND ADVISORS, INC. LETTERHEAD

[_____]

[NAME]
[ADDRESS]
[ADDRESS]
[ADDRESS]

Re: Strand Advisors, Inc. – Director Agreement

Dear [_____]:

On behalf of Strand Advisors, Inc. (the “Company”), I am pleased to have you join the Company’s Board of Directors. This letter sets forth the terms of the Director Agreement (the “Agreement”) that the Company is offering to you.

1. APPOINTMENT TO THE BOARD OF DIRECTORS.

a. Title, Term and Responsibilities.

i. Subject to terms set forth herein, the Company agrees to appoint you to serve as a Director on the Company’s Board of Directors (the “Board”), and you hereby accept such appointment the date you sign this Agreement (the “Effective Date”). You will serve as a Director of the Board from the Effective Date until you voluntarily resign, are removed from the Board, or are not re-elected (the “Term”). Your rights, duties and obligations as a Director shall be governed by the Certificate of Incorporation and Bylaws of the Company, each as amended from time to time (collectively, the “Governing Documents”), except that where the Governing Documents conflict with this Agreement, this Agreement shall control.

ii. You acknowledge and understand that the Company is the general partner of Highland Capital Management, L.P. (“HCMLP”) and that HCMLP is currently the debtor in possession in a chapter 11 bankruptcy proceeding (the “Bankruptcy”) pending in the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). Your rights, duties, and obligations may in certain instances require your involvement, either directly or indirectly, in the Bankruptcy and such rights, duties, and obligations may be impacted in whole or in part by the Bankruptcy.

b. Mandatory Board Meeting Attendance. As a Director, you agree to apply all reasonable efforts to attend each regular meeting of the Board. You also agree to devote sufficient time to matters that may arise at the Company from time to time that require your attention as a Director.

c. Independent Contractor. Under this Agreement, your relationship with the Company will be that of an independent contractor as you will not be an employee of the Company nor eligible to participate in regular employee benefit and compensation plans of the Company.

d. Information Provided by the Company. The Company shall: (i) provide you with reasonable access to management and other representatives of the Company and HCMLP; and (ii) furnish all data, material, and other information concerning the business, assets, liabilities, operations, cash flows, properties, financial condition and prospects of the Company and HCMLP that you request in connection with the services to be provided to the Company. You will rely, without further independent verification,

on the accuracy and completeness of all publicly available information and information that is furnished by or on behalf of the Company and otherwise reviewed by you in connection with the services performed for the Company. The Company acknowledges and agrees that you are not responsible for the accuracy or completeness of such information and shall not be responsible for any inaccuracies or omissions therein, provided that if you become aware of material inaccuracies or errors in any such information you shall promptly notify the Board of such errors, inaccuracies or concerns.

2. COMPENSATION AND BENEFITS.

a. Retainer. The Company will pay you a retainer for each month you serve on the Board (the "Retainer") to be paid in monthly installments of (a) \$60,000 for each of the first three months, (b) \$50,000 for each of the next three months, and (c) \$30,000 for each of the following six months. The parties will re-visit the Retainer after the sixth month. The Company's obligation to pay the Retainer will cease upon the termination of the Term.

b. Expense Reimbursement. The Company will reimburse you for all reasonable travel or other expenses, including expenses of counsel, incurred by you in connection with your services hereunder, in accordance with the Company's expense reimbursement policy as in effect from time to time.

c. Invoices; Payment.

i. In order to receive the compensation and reimbursement set forth in this Section 2, you are required to send to the Company regular monthly invoices indicating your fees, costs, and expenses incurred. Payment of the Retainer will be due on the first business day of each month regardless of whether an invoice has been provided. Reimbursement of expenses will also occur on the first business day of each month, subject to the Company's receipt of appropriate documentation required by the Company's expenses reimbursement policy.

ii. You further agree that the Company's obligation to pay the compensation and reimbursement set forth in this Section 2 is conditioned in all respects on the entry of a final order in the court overseeing the Bankruptcy that authorizes and requires HCMLP to reimburse the Company for all such payments to you.

d. Indemnification; D&O Insurance. You will receive indemnification as a Director of the Company on the terms set forth in that certain Indemnification Agreement, dated [REDACTED], a copy of which is attached hereto as **Appendix A** (the "Indemnification Agreement"). You will also be provided coverage under the Company's directors' and officers' insurance policy as set forth in the Indemnification Agreement.

e. Tax Indemnification. You acknowledge that the Company will not be responsible for the payment of any federal or state taxes that might be assessed with respect to the Retainer and you agree to be responsible for all such taxes.

3. PROPRIETARY INFORMATION OBLIGATIONS.

a. Proprietary Information. You agree that during the Term and thereafter that you will take all steps reasonably necessary to hold all information of the Company, its affiliates, and related entities, which a reasonable person would believe to be confidential or proprietary information, in trust and confidence, and not disclose any such confidential or proprietary information to any third party without first obtaining the Company's express written consent on a case-by-case basis.

b. Third Party Information. The Company has received and will in the future receive from third parties confidential or proprietary information (“Third Party Information”) subject to a duty on the Company’s part to maintain the confidentiality of such information and to use it only for certain limited purposes. You agree to hold such Third Party Information in confidence and not to disclose it to anyone (other than Company personnel who need to know such information in connection with their work for Company) or to use, except in connection with your services for Company under this Agreement, Third Party Information unless expressly authorized in writing by the Company.

c. Return of Company Property. Upon the end of the Term or upon the Company’s earlier request, you agree to deliver to the Company any and all notes, materials and documents, together with any copies thereof, which contain or disclose any confidential or proprietary information or Third Party Information.

4. OUTSIDE ACTIVITIES.

a. Investments and Interests. Except as permitted by Section 4(b), you agree not to participate in, directly or indirectly, any position or investment known by you to be materially adverse to the Company or any of its affiliates or related entities.

b. Activities. Except with the prior written consent of the Board, you will not during your tenure as a member of the Company’s Board undertake or engage in any other directorship, employment or business enterprise in direct competition with the Company or any of its affiliates or related entities, other than ones in which you are a passive investor or other activities in which you were a participant prior to your appointment to the Board as disclosed to the Company.

c. Other Agreements. You agree that you will not disclose to the Company or use on behalf of the Company any confidential information governed by any agreement between you and any third party except in accordance with such agreement.

5. TERMINATION OF DIRECTORSHIP.

a. Voluntary Resignation, Removal Pursuant to Bylaws. You may resign from the Board at any time with or without advance notice, with or without reason. Subject to any orders or agreements entered into in connection with the Bankruptcy, you may be removed from the Board at any time, for any reason, in any manner provided by the Governing Documents and applicable law.

b. Continuation. The provisions of this Agreement that give the parties rights or obligations beyond the termination of this Agreement will survive and continue to bind the parties.

c. Payment of Fees; Reimbursement. Following termination of this Agreement, any undisputed fees and expenses due to you will be remitted promptly following receipt by the Company of any outstanding invoices.

6. GENERAL PROVISIONS.

a. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be invalid, illegal or unenforceable such provision will be reformed, construed and enforced to render it valid, legal, and enforceable consistent with the intent of the parties insofar as possible.

b. Entire Agreement. This Agreement constitutes the entire agreement between you and the Company with respect to your service as a Director and supersedes any prior agreement, promise, representation or statement written between you and the Company with regard to this subject matter. It is entered into without reliance on any promise, representation, statement or agreement other than those expressly contained or incorporated herein, and it cannot be modified or amended except in a writing signed by the party or parties affected by such modification or amendment.

c. Successors and Assigns. This Agreement is intended to bind and inure to the benefit of and be enforceable by you and the Company and our respective successors, assigns, heirs, executors and administrators, except that you may not assign any of your rights or duties hereunder.

d. Governing Law. This Agreement will be governed by the law of the State of Delaware as applied to contracts made and performed entirely within Delaware.

We are all delighted to be able to extend you this offer and look forward to working with you. To indicate your acceptance of the Company's offer, please sign and date this Agreement below.

Sincerely,

STRAND ADVISORS, INC.

By: Scott Ellington
Its: Secretary

[Signature Page Follows]

ACCEPTED AND AGREED:

[NAME]

Date: _____

INDEMNIFICATION AND GUARANTY AGREEMENT

This Indemnification and Guaranty Agreement (“**Agreement**”), dated as of [_____], is by and between STRAND ADVISORS, INC., a Delaware corporation (the “**Company**”), HIGHLAND CAPITAL MANAGEMENT, LP, a Delaware partnership (the “**Debtor**”) (solely as to Section 29 hereunder), and [_____] (the “**Indemnitee**”).

WHEREAS, the Company is the general partner of the Debtor and, in such capacity, manages the business affairs of the Debtor;

WHEREAS, Indemnitee has agreed to serve as a member of the Company’s board of directors (the “**Board**”) effective as of the date hereof;

WHEREAS, the Board has determined that enhancing the ability of the Company, on its own behalf and for the benefit of the Debtor, to retain and attract as directors the most capable Persons is in the best interests of the Company and the Debtor and that the Company and the Debtor therefore should seek to assure such Persons that indemnification and insurance coverage is available; and

WHEREAS, in recognition of the need to provide Indemnitee with protection against personal liability, in order to procure Indemnitee’s service as a director of the Company, in order to enhance Indemnitee’s ability to serve the Company in an effective manner and in order to provide such protection pursuant to express contract rights (intended to be enforceable irrespective of, among other things, any amendment to the Company’s Bylaws (as may be amended further from time to time, the “**Bylaws**”), any change in the composition of the Board or any change in control, business combination or similar transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of, and the advancement of Expenses (as defined in Section 1(g) below) to, Indemnitee as set forth in this Agreement and for the coverage of Indemnitee under the Company’s directors’ and officers’ liability or similar insurance policies (“**D&O Insurance**”).

NOW, THEREFORE, in consideration of the foregoing and the Indemnitee’s agreement to provide services to the Company, the parties (including the Debtor solely as to Section 29 hereunder) agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) “**Change in Control**” means the occurrence of any of the following: (i) the direct or indirect sale, lease, transfer, conveyance or other disposition, in one or a series of related transactions (including any merger or consolidation or whether by operation of law or otherwise), of all or substantially all of the properties or assets of the Company and its subsidiaries, to a third party purchaser (or group of affiliated third party purchasers) or (ii) the consummation of any transaction (including any merger or consolidation or whether by operation of law or otherwise), the result of which is that a third party purchaser (or group of affiliated third party purchasers) becomes the beneficial

owner, directly or indirectly, of more than fifty percent (50%) of the then outstanding Shares or of the surviving entity of any such merger or consolidation.

(b) “**Claim**” means:

(i) any threatened, pending or completed action, suit, claim, demand, arbitration, inquiry, hearing, proceeding or alternative dispute resolution mechanism, or any actual, threatened or completed proceeding, including any and all appeals, in each case, whether brought by or in the right of the Company or otherwise, whether civil, criminal, administrative, arbitral, investigative or other, whether formal or informal, and whether made pursuant to federal, state, local, foreign or other law, and whether or not commenced prior to the date of this Agreement, in which Indemnitee was, is or will be involved as a party or otherwise, by reason of or relating to either (a) any action or alleged action taken by Indemnitee (or failure or alleged failure to act) or of any action or alleged action (or failure or alleged failure to act) on Indemnitee’s part, while acting in his or her Corporate Status or (b) the fact that Indemnitee is or was serving at the request of the Company or any subsidiary of the Company as director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise, in each case, whether or not serving in such capacity at the time any Loss or Expense is paid or incurred for which indemnification or advancement of Expenses can be provided under this Agreement, except one initiated by Indemnitee to enforce his or her rights under this Agreement; or

(ii) any inquiry, hearing or investigation that the Indemnitee determines might lead to the institution of any such action, suit, proceeding or alternative dispute resolution mechanism.

(c) “**Controlled Entity**” means any corporation, limited liability company, partnership, joint venture, trust or other Enterprise, whether or not for profit, that is, directly or indirectly, controlled by the Company. For purposes of this definition, the term “control” means the possession, directly or indirectly, of the power to direct, or cause the direction of, the management or policies of an Enterprise, whether through the ownership of voting securities, through other voting rights, by contract or otherwise.

(d) “**Corporate Status**” means the status of a Person who is or was a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of the Company or of any other Enterprise which such Person is or was serving at the request of the Company or any subsidiary of the Company. In addition to any service at the actual request of the Company, Indemnitee will be deemed, for purposes of this Agreement, to be serving or to have served at the request of the Company or any subsidiary of the Company as a director, officer, employee, partner, member, manager, trustee, fiduciary or agent of another Enterprise if Indemnitee is or was serving as a director, officer, employee, partner, member, manager, fiduciary, trustee or agent of such Enterprise and (i) such Enterprise is or at the time of such service was a Controlled Entity, (ii) such Enterprise is or at the time of such service was an employee benefit plan (or related trust) sponsored or maintained by the Company or a Controlled Entity or (iii) the Company or a

Controlled Entity, directly or indirectly, caused Indemnitee to be nominated, elected, appointed, designated, employed, engaged or selected to serve in such capacity.

(e) “**Disinterested Director**” means a director of the Company who is not and was not a party to the Claim in respect of which indemnification is sought by Indemnitee. Under no circumstances will James Dondero be considered a Disinterested Director.

(f) “**Enterprise**” means the Company or any subsidiary of the Company or any other corporation, partnership, limited liability company, joint venture, employee benefit plan, trust or other entity or other enterprise of which Indemnitee is or was serving at the request of the Company or any subsidiary of the Company in a Corporate Status.

(g) “**Expenses**” means any and all expenses, fees, including attorneys’, witnesses’ and experts’ fees, disbursements and retainers, court costs, transcript costs, travel expenses, duplicating, printing and binding costs, telephone charges, postage, fax transmission charges, secretarial services, delivery services fees, and all other fees, costs, disbursements and expenses paid or incurred in connection with investigating, defending, prosecuting, being a witness in or participating in (including on appeal), or preparing to defend, prosecute, be a witness or participate in, any Claim. Expenses also shall include (i) Expenses paid or incurred in connection with any appeal resulting from any Claim, including, without limitation, the premium, security for, and other costs relating to any cost bond, supersedeas bond, or other appeal bond or its equivalent, and (ii) for purposes of Section 4 only, Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee’s rights under this Agreement, by litigation or otherwise. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(h) “**Exchange Act**” means the Securities Exchange Act of 1934, as amended, or any successor statute thereto, and the rules and regulations of the United States Securities and Exchange Commission promulgated thereunder.

(i) “**Expense Advance**” means any payment of Expenses advanced to Indemnitee by the Company pursuant to Section 4 or Section 5 hereof.

(j) “**Indemnifiable Event**” means any event or occurrence, whether occurring before, on or after the date of this Agreement, related to the fact that Indemnitee is or was a manager, director, officer, employee or agent of the Company or any subsidiary of the Company, or is or was serving at the request of the Company or any subsidiary of the Company as a manager, director, officer, employee, member, manager, trustee or agent of any other Enterprise or by reason of an action or inaction by Indemnitee in any such capacity (whether or not serving in such capacity at the time any Loss is incurred for which indemnification can be provided under this Agreement).

(k) “**Independent Counsel**” means a law firm, or a member of a law firm, that is experienced in matters of corporation law and neither presently performs, nor in the past three (3) years has performed, services for any of: (i) James Dondero, (ii) the

Company or Indemnitee (other than in connection with matters concerning Indemnitee under this Agreement or of other indemnitees under similar agreements), or (iii) any other party to the Claim giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term “Independent Counsel” shall not include any Person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee’s rights under this Agreement.

(l) “**Losses**” means any and all Expenses, damages, losses, liabilities, judgments, fines (including excise taxes and penalties assessed with respect to employee benefit plans and ERISA excise taxes), penalties (whether civil, criminal or other), amounts paid or payable in settlement, including any interest, assessments, any federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this Agreement and all other charges paid or payable in connection with investigating, defending, being a witness in or participating in (including on appeal), or preparing to defend, be a witness or participate in, any Claim.

(m) “**Person**” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity and includes the meaning set forth in Sections 13(d) and 14(d) of the Exchange Act.

(n) “**Shares**” means an ownership interest of a member in the Company, including each of the common shares of the Company or any other class or series of Shares designated by the Board.

(o) References to “**servicing at the request of the Company**” include any service as a director, manager, officer, employee, representative or agent of the Company which imposes duties on, or involves services by, such director, manager, officer, employee or agent, including but not limited to any employee benefit plan, its participants or beneficiaries; and a Person who acted in good faith and in a manner he or she reasonably believed to be in and not opposed to the best interests of the Company in Indemnitee’s capacity as a director, manager, officer, employee, representative or agent of the Company, including but not limited to acting in the best interest of participants and beneficiaries of an employee benefit plan will be deemed to have acted in a manner “**not opposed to the best interests of the Company**” as referred to under applicable law or in this Agreement.

2. Indemnification.

(a) Subject to Section 9 and Section 10 of this Agreement, the Company shall indemnify and hold Indemnitee harmless, to the fullest extent permitted by the laws of the State of Delaware in effect on the date hereof, or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against any and all Losses and Expenses if Indemnitee was or is or becomes a party to or participant in, or is threatened to be made a party to or participant in, any Claim by reason of or arising in part out of an Indemnifiable Event, including, without limitation, Claims

brought by or in the right of the Company, Claims brought by third parties, and Claims in which the Indemnitee is solely a witness.

(b) For the avoidance of doubt, the indemnification rights and obligations contained herein shall also extend to any Claim in which the Indemnitee was or is a party to, was or is threatened to be made a party to or was or is otherwise involved in any capacity in by reason of Indemnitee's Corporate Status as a fiduciary capacity with respect to an employee benefit plan. In connection therewith, if the Indemnitee has acted in good faith and in a manner which appeared to be consistent with the best interests of the participants and beneficiaries of an employee benefit plan and not opposed thereto, the Indemnitee shall be deemed to have acted in a manner not opposed to the best interests of the Company.

3. Contribution.

(a) Whether or not the indemnification provided in Section 2 is available, if, for any reason, Indemnitee shall elect or be required to pay all or any portion of any judgment or settlement in any Claim in which the Company is jointly liable with Indemnitee (or would be if joined in such Claim), the Company shall contribute to the amount of Losses paid or payable by Indemnitee in proportion to the relative benefits received by the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, from the transaction or events from which such Claim arose; provided, however, that the proportion determined on the basis of relative benefit may, to the extent necessary to conform to law, be further adjusted by reference to the relative fault of the Company and all officers, directors, managers or employees of the Company other than Indemnitee who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, in connection with the transaction or events that resulted in such Losses, as well as any other equitable considerations which applicable law may require to be considered. The relative fault of the Company and all officers, directors, managers or employees of the Company, other than Indemnitee, who are jointly liable with Indemnitee (or would be if joined in such Claim), on the one hand, and Indemnitee, on the other hand, shall be determined by reference to, among other things, the degree to which their actions were motivated by intent to gain personal profit or advantage, the degree to which their liability is primary or secondary and the degree to which their conduct is active or passive.

(b) The Company hereby agrees to fully indemnify and hold Indemnitee harmless from any claims of contribution which may be brought by officers, directors, managers or employees of the Company, other than Indemnitee, who may be jointly liable with Indemnitee.

(c) To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes,

amounts paid or to be paid in settlement and/or for Expenses, in connection with any Claim relating to an Indemnifiable Event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Claim in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Claim; and/or (ii) the relative fault of the Company (and its directors, managers, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

4. Advancement of Expenses. The Company shall, if requested by Indemnitee, advance, to the fullest extent permitted by law, to Indemnitee (an “**Expense Advance**”) any and all Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any Claim arising out of an Indemnifiable Event (whether prior to or after its final disposition). Indemnitee’s right to such advancement is not subject to the satisfaction of any standard of conduct. Without limiting the generality or effect of the foregoing, within thirty (30) business days after any request by Indemnitee, the Company shall, in accordance with such request, (a) pay such Expenses on behalf of Indemnitee, (b) advance to Indemnitee funds in an amount sufficient to pay such Expenses, or (c) reimburse Indemnitee for such Expenses. In connection with any request for Expense Advances, Indemnitee shall not be required to provide any documentation or information to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Execution and delivery to the Company of this Agreement by Indemnitee constitutes an undertaking by the Indemnitee to repay any amounts paid, advanced or reimbursed by the Company pursuant to this Section 4, the final sentence of Section 9(b), or Section 11(b) in respect of Expenses relating to, arising out of or resulting from any Claim in respect of which it shall be determined, pursuant to Section 9, following the final disposition of such Claim, that Indemnitee is not entitled to indemnification hereunder. No other form of undertaking shall be required other than the execution of this Agreement. Each Expense Advance will be unsecured and interest free and will be made by the Company without regard to Indemnitee’s ability to repay the Expense Advance.

5. Indemnification for Expenses in Enforcing Rights. To the fullest extent allowable under applicable law, the Company shall also indemnify against, and, if requested by Indemnitee, shall advance to Indemnitee subject to and in accordance with Section 4, any Expenses actually and reasonably paid or incurred (even if unpaid) by Indemnitee in connection with any action or proceeding by Indemnitee for (a) indemnification or reimbursement or advance payment of Expenses by the Company under any provision of this Agreement, or under any other agreement or provision of the Bylaws now or hereafter in effect relating to Claims relating to Indemnifiable Events, and/or (b) recovery under any D&O Insurance maintained by the Company, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification or insurance recovery, as the case may be. Indemnitee shall be required to reimburse the Company in the event that a final judicial determination is made that such action brought by Indemnitee was frivolous or not made in good faith.

6. Partial Indemnity. If Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for a portion of any Losses in respect of a Claim

related to an Indemnifiable Event but not for the total amount thereof, the Company shall nevertheless indemnify Indemnitee for the portion thereof to which Indemnitee is entitled.

7. Notification and Defense of Claims.

(a) Notification of Claims. Indemnitee shall notify the Company in writing as soon as reasonably practicable of any Claim which could relate to an Indemnifiable Event or for which Indemnitee could seek Expense Advances, including a brief description (based upon information then available to Indemnitee) of the nature of, and the facts underlying, such Claim, to the extent then known. The failure by Indemnitee to timely notify the Company hereunder shall not relieve the Company from any liability hereunder except to the extent the Company's ability to participate in the defense of such claim was materially and adversely affected by such failure. If at the time of the receipt of such notice, the Company has D&O Insurance or any other insurance in effect under which coverage for Claims related to Indemnifiable Events is potentially available, the Company shall give prompt written notice to the applicable insurers in accordance with the procedures, provisions, and terms set forth in the applicable policies. The Company shall provide to Indemnitee a copy of such notice delivered to the applicable insurers, and copies of all subsequent correspondence between the Company and such insurers regarding the Claim, in each case substantially concurrently with the delivery or receipt thereof by the Company.

(b) Defense of Claims. The Company shall be entitled to participate in the defense of any Claim relating to an Indemnifiable Event at its own expense and, except as otherwise provided below, to the extent the Company so wishes, it may assume the defense thereof with counsel reasonably satisfactory to Indemnitee. After notice from the Company to Indemnitee of its election to assume the defense of any such Claim, the Company shall not be liable to Indemnitee under this Agreement or otherwise for any Expenses subsequently directly incurred by Indemnitee in connection with Indemnitee's defense of such Claim other than reasonable costs of investigation or as otherwise provided below. Indemnitee shall have the right to employ its own legal counsel in such Claim, but all Expenses related to such counsel incurred after notice from the Company of its assumption of the defense shall be at Indemnitee's own expense; provided, however, that if (i) Indemnitee's employment of its own legal counsel has been authorized by the Company, (ii) Indemnitee has reasonably determined that there may be a conflict of interest between Indemnitee and the Company in the defense of such Claim, (iii) after a Change in Control, Indemnitee's employment of its own counsel has been approved by the Independent Counsel or (iv) the Company shall not in fact have employed counsel to assume the defense of such Claim, then Indemnitee shall be entitled to retain its own separate counsel (but not more than one law firm plus, if applicable, local counsel in respect of any such Claim) and all Expenses related to such separate counsel shall be borne by the Company.

8. Procedure upon Application for Indemnification. In order to obtain indemnification pursuant to this Agreement, Indemnitee shall submit to the Company a written request therefor, including in such request such documentation and information as

is reasonably available to Indemnitee and is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Claim, provided that documentation and information need not be so provided to the extent that the provision thereof would undermine or otherwise jeopardize attorney-client privilege. Indemnification shall be made insofar as the Company determines Indemnitee is entitled to indemnification in accordance with Section 9 below.

9. Determination of Right to Indemnification.

(a) Mandatory Indemnification; Indemnification as a Witness.

(i) To the extent that Indemnitee shall have been successful on the merits or otherwise in defense of any Claim relating to an Indemnifiable Event or any portion thereof or in defense of any issue or matter therein, including without limitation dismissal without prejudice, Indemnitee shall be indemnified against all Losses relating to such Claim in accordance with Section 2, and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(ii) To the extent that Indemnitee's involvement in a Claim relating to an Indemnifiable Event is to prepare to serve and serve as a witness, and not as a party, the Indemnitee shall be indemnified against all Losses incurred in connection therewith to the fullest extent allowable by law and no Standard of Conduct Determination (as defined in Section 9(b)) shall be required.

(b) Standard of Conduct. To the extent that the provisions of Section 9(a) are inapplicable to a Claim related to an Indemnifiable Event that shall have been finally disposed of, any determination of whether Indemnitee has satisfied any applicable standard of conduct under Delaware law that is a legally required condition to indemnification of Indemnitee hereunder against Losses relating to such Claim and any determination that Expense Advances must be repaid to the Company (a "**Standard of Conduct Determination**") shall be made as follows:

(i) if no Change in Control has occurred, (A) by a majority vote of the Disinterested Directors, even if less than a quorum of the Board, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum or (C) if there are no such Disinterested Directors, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee; and

(ii) if a Change in Control shall have occurred, (A) if the Indemnitee so requests in writing, by a majority vote of the Disinterested Directors, even if less than a quorum of the Board or (B) otherwise, by Independent Counsel in a written opinion addressed to the Board, a copy of which shall be delivered to Indemnitee.

Subject to Section 4, the Company shall indemnify and hold Indemnitee harmless against and, if requested by Indemnitee, shall reimburse Indemnitee for, or advance to Indemnitee, within thirty (30) business days of such request, any and all Expenses

incurred by Indemnitee in cooperating with the Person or Persons making such Standard of Conduct Determination.

(c) Making the Standard of Conduct Determination. The Company shall use its reasonable best efforts to cause any Standard of Conduct Determination required under Section 9(b) to be made as promptly as practicable. If the Person or Persons designated to make the Standard of Conduct Determination under Section 9(b) shall not have made a determination within ninety (90) days after the later of (A) receipt by the Company of a written request from Indemnitee for indemnification pursuant to Section 8 (the date of such receipt being the “**Notification Date**”) and (B) the selection of an Independent Counsel, if such determination is to be made by Independent Counsel, then Indemnitee shall be deemed to have satisfied the applicable standard of conduct; provided that such 90-day period may be extended for a reasonable time, not to exceed an additional thirty (30) days, if the Person or Persons making such determination in good faith requires such additional time to obtain or evaluate information relating thereto. Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement of Indemnitee to indemnification under this Agreement shall be required to be made prior to the final disposition of any Claim.

(d) Payment of Indemnification. If, in regard to any Losses:

(i) Indemnitee shall be entitled to indemnification pursuant to Section 9(a);

(ii) no Standard of Conduct Determination is legally required as a condition to indemnification of Indemnitee hereunder; or

(iii) Indemnitee has been determined or deemed pursuant to Section 9(b) or Section 9(c) to have satisfied the Standard of Conduct Determination,

then the Company shall pay to Indemnitee, within thirty (30) business days after the later of (A) the Notification Date or (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) is satisfied, an amount equal to such Losses.

(e) Selection of Independent Counsel for Standard of Conduct Determination. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(i), the Independent Counsel shall be selected by the Board and the Company shall give written notice to Indemnitee advising him of the identity of the Independent Counsel so selected. If a Standard of Conduct Determination is to be made by Independent Counsel pursuant to Section 9(b)(ii), the Independent Counsel shall be selected by Indemnitee, and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either case, Indemnitee or the Company, as applicable, may, within thirty (3) business days after receiving written notice of selection from the other, deliver to the other a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not satisfy the criteria set forth in the definition of “Independent Counsel” in Section 1(k), and the objection shall

set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the Person or firm so selected shall act as Independent Counsel. If such written objection is properly and timely made and substantiated, (i) the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit; and (ii) the non-objecting party may, at its option, select an alternative Independent Counsel and give written notice to the other party advising such other party of the identity of the alternative Independent Counsel so selected, in which case the provisions of the two immediately preceding sentences, the introductory clause of this sentence and numbered clause (i) of this sentence shall apply to such subsequent selection and notice. If applicable, the provisions of clause (ii) of the immediately preceding sentence shall apply to successive alternative selections. If no Independent Counsel that is permitted under the foregoing provisions of this Section 9(e) to make the Standard of Conduct Determination shall have been selected within twenty (20) days after the Company gives its initial notice pursuant to the first sentence of this Section 9(e) or Indemnitee gives its initial notice pursuant to the second sentence of this Section 9(e), as the case may be, either the Company or Indemnitee may petition the Court of Chancery of the State of Delaware (“**Delaware Court**”) to resolve any objection which shall have been made by the Company or Indemnitee to the other’s selection of Independent Counsel and/or to appoint as Independent Counsel a Person to be selected by the Court or such other Person as the Court shall designate, and the Person or firm with respect to whom all objections are so resolved or the Person or firm so appointed will act as Independent Counsel. In all events, the Company shall pay all of the reasonable fees and expenses of the Independent Counsel incurred in connection with the Independent Counsel’s determination pursuant to Section 9(b).

(f) Presumptions and Defenses.

(i) Indemnitee’s Entitlement to Indemnification. In making any Standard of Conduct Determination, the Person or Persons making such determination shall presume that Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification, and the Company shall have the burden of proof to overcome that presumption and establish that Indemnitee is not so entitled. Any Standard of Conduct Determination that is adverse to Indemnitee may be challenged by the Indemnitee in the Delaware Court. No determination by the Company (including by its Board or any Independent Counsel) that Indemnitee has not satisfied any applicable standard of conduct may be used as a defense to enforcement by Indemnitee of Indemnitee’s rights of indemnification or reimbursement or advance of payment of Expenses by the Company hereunder or create a presumption that Indemnitee has not met any applicable standard of conduct.

(ii) Reliance as a Safe Harbor. For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company if Indemnitee’s actions or omissions to act are taken in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports

or statements furnished to Indemnitee by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board or by any other Person (including legal counsel, accountants and financial advisors) as to matters Indemnitee reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, manager, officer, agent or employee of the Company (other than Indemnitee) shall not be imputed to Indemnitee for purposes of determining the right to indemnity hereunder.

(iii) Defense to Indemnification and Burden of Proof. It shall be a defense to any action brought by Indemnitee against the Company to enforce this Agreement (other than an action brought to enforce a claim for Losses incurred in defending against a Claim related to an Indemnifiable Event in advance of its final disposition) that it is not permissible under applicable law for the Company to indemnify Indemnitee for the amount claimed. In connection with any such action or any related Standard of Conduct Determination, the burden of proving such a defense or that the Indemnitee did not satisfy the applicable standard of conduct shall be on the Company.

10. Exclusions from Indemnification. Notwithstanding anything in this Agreement to the contrary, the Company shall not be obligated to:

(a) indemnify or advance funds to Indemnitee for Losses with respect to proceedings initiated by Indemnitee, including any proceedings against the Company or its managers, officers, employees or other indemnitees and not by way of defense, except:

(i) proceedings referenced in Section 4 above (unless a court of competent jurisdiction determines that each of the material assertions made by Indemnitee in such proceeding was not made in good faith or was frivolous); or

(ii) where the Company has joined in or the Board has consented to the initiation of such proceedings.

(b) indemnify Indemnitee if a final decision by a court of competent jurisdiction determines that such indemnification is prohibited by applicable law.

(c) indemnify Indemnitee for the disgorgement of profits arising from the purchase or sale by Indemnitee of securities of the Company in violation of Section 16(b) of the Exchange Act, or any similar successor statute.

11. Remedies of Indemnitee.

(a) In the event that (i) a determination is made pursuant to Section 9 that Indemnitee is not entitled to indemnification under this Agreement, (ii) an Expense Advance is not timely made pursuant to Section 4, (iii) no determination of entitlement to indemnification is made pursuant to Section 9 within 90 days after receipt by the Company of the request for indemnification, or (iv) payment of indemnification is not made pursuant Section 9(d), Indemnitee shall be entitled to an adjudication in a Delaware Court, or in any other court of competent jurisdiction, of Indemnitee's entitlement to such

indemnification. Indemnitee shall commence such proceeding seeking an adjudication within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 11(a). The Company shall not oppose Indemnitee's right to seek any such adjudication.

(b) In the event that Indemnitee, pursuant to this Section 11, seeks a judicial adjudication or arbitration of his or her rights under, or to recover damages for breach of, this Agreement, any other agreement for indemnification, payment of Expenses in advance or contribution hereunder or to recover under any director, manager, and officer liability insurance policies or any other insurance policies maintained by the Company, the Company will, to the fullest extent permitted by law and subject to Section 4, indemnify and hold harmless Indemnitee against any and all Expenses which are paid or incurred by Indemnitee in connection with such judicial adjudication or arbitration, regardless of whether Indemnitee ultimately is determined to be entitled to such indemnification, payment of Expenses in advance or contribution or insurance recovery. In addition, if requested by Indemnitee, subject to Section 4 the Company will (within thirty (30) days after receipt by the Company of the written request therefor), pay as an Expense Advance such Expenses, to the fullest extent permitted by law.

(c) In the event that a determination shall have been made pursuant to Section 9 that Indemnitee is not entitled to indemnification, any judicial proceeding commenced pursuant to this Section 11 shall be conducted in all respects as a de novo trial on the merits, and Indemnitee shall not be prejudiced by reason of the adverse determination under Section 9.

(d) If a determination shall have been made pursuant to Section 9 that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 11, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's misstatement not materially misleading in connection with the application for indemnification, or (ii) a prohibition of such indemnification under applicable law.

12. Settlement of Claims. The Company shall not be liable to Indemnitee under this Agreement for any amounts paid in settlement of any threatened or pending Claim related to an Indemnifiable Event effected without the Company's prior written consent, which shall not be unreasonably withheld; provided, however, that if a Change in Control has occurred, the Company shall be liable for indemnification of the Indemnitee for amounts paid in settlement if an Independent Counsel (which, for purposes of this Section 12, shall be selected by the Company with the prior consent of the Indemnitee, such consent not to be unreasonably withheld or delayed) has approved the settlement. The Company shall not settle any Claim related to an Indemnifiable Event in any manner that would impose any Losses on the Indemnitee without the Indemnitee's prior written consent.

13. Duration. All agreements and obligations of the Company contained herein shall continue during the period that Indemnitee is a manager of the Company (or is serving at the request of the Company as a director, manager, officer, employee, member, trustee or

agent of another Enterprise) and shall continue thereafter (i) so long as Indemnitee may be subject to any possible Claim relating to an Indemnifiable Event (including any rights of appeal thereto) and (ii) throughout the pendency of any proceeding (including any rights of appeal thereto) commenced by Indemnitee to enforce or interpret his or her rights under this Agreement, even if, in either case, he or she may have ceased to serve in such capacity at the time of any such Claim or proceeding.

14. Other Indemnitors. The Company hereby acknowledges that Indemnitee may have certain rights to indemnification, advancement of Expenses and/or insurance provided by certain private equity funds, hedge funds or other investment vehicles or management companies and/or certain of their affiliates and by personal policies (collectively, the “**Other Indemnitors**”). The Company hereby agrees (i) that it is the indemnitor of first resort (i.e., its obligations to Indemnitee are primary and any obligation of the Other Indemnitors to advance Expenses or to provide indemnification for the same Expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of Expenses incurred by Indemnitee and shall be liable for the full amount of all Expenses, judgments, penalties, fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement and the Bylaws (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Other Indemnitors, and, (iii) that it irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Other Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of Indemnitee against the Company. The Company and Indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Section 14.

15. Non-Exclusivity. The rights of Indemnitee hereunder will be in addition to any other rights Indemnitee may have under the Bylaws, the General Corporation Law of the State of Delaware (as may be amended from time to time, the “**DGCL**”), any other contract, in law or in equity, and under the laws of any state, territory, or jurisdiction, or otherwise (collectively, “**Other Indemnity Provisions**”). The Company will not adopt any amendment to its Bylaws the effect of which would be to deny, diminish, encumber or limit Indemnitee’s right to indemnification under this Agreement or any Other Indemnity Provision.

16. Liability Insurance. For the duration of Indemnitee’s service as a director of the Company, and thereafter for so long as Indemnitee shall be subject to any pending Claim relating to an Indemnifiable Event, the Company shall use best efforts to continue to maintain in effect policies of D&O Insurance providing coverage that is at least substantially comparable in scope and amount to that provided by similarly situated companies. In all policies of D&O Insurance maintained by the Company, Indemnitee shall be named as an insured in such a manner as to provide Indemnitee the same rights

and benefits as are provided to the most favorably insured of the Company's directors. Upon request, the Company will provide to Indemnitee copies of all D&O Insurance applications, binders, policies, declarations, endorsements and other related materials.

17. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment to Indemnitee in respect of any Losses to the extent Indemnitee has otherwise received payment under any insurance policy, any Other Indemnity Provisions or otherwise of the amounts otherwise indemnifiable by the Company hereunder.

18. Subrogation. In the event of payment to Indemnitee under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee. Indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

19. Indemnitee Consent. The Company will not, without the prior written consent of Indemnitee, consent to the entry of any judgment against Indemnitee or enter into any settlement or compromise which (a) includes an admission of fault of Indemnitee, any non-monetary remedy imposed on Indemnitee or a Loss for which Indemnitee is not wholly indemnified hereunder or (b) with respect to any Claim with respect to which Indemnitee may be or is made a party or a participant or may be or is otherwise entitled to seek indemnification hereunder, does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Claim, which release will be in form and substance reasonably satisfactory to Indemnitee. Neither the Company nor Indemnitee will unreasonably withhold its consent to any proposed settlement; provided, however, Indemnitee may withhold consent to any settlement that does not provide a full and unconditional release of Indemnitee from all liability in respect of such Claim.

20. Amendments. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

21. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part of the business and/or assets of the Company, by written agreement in form and substance satisfactory to Indemnitee, expressly to assume

and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

22. Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision which is not essential to the effectuation of the basic purposes of this Agreement is determined by a court of competent jurisdiction to be invalid, unenforceable or contrary to the DGCL or existing or future applicable law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal. In that case, this Agreement shall be construed so as to limit any term or provision so as to make it valid, enforceable and legal within the requirements of any applicable law, and in the event such term or provision cannot be so limited, this Agreement shall be construed to omit such invalid, unenforceable or illegal provisions.

23. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed, by postage prepaid, certified or registered mail:

- (a) if to Indemnitee, to the address set forth on the signature page hereto.
- (b) if to the Company, to:

Strand Advisors, Inc.
Attention: Isaac Leventon
Address: 300 Crescent Court, Suite 700
Dallas, Texas 75201
Email: ileventon@highlandcapital.com

Notice of change of address shall be effective only when given in accordance with this Section 23. All notices complying with this Section 23 shall be deemed to have been received on the date of hand delivery or on the third business day after mailing.

24. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF DELAWARE (OTHER THAN ITS RULES OF CONFLICTS OF LAW TO THE EXTENT THAT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION WOULD BE REQUIRED THEREBY).

25. Jurisdiction. The parties hereby agree that any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby, whether in contract, tort or otherwise, shall be brought in the United States District Court for the District of Delaware or in the Court of Chancery of the State of Delaware (or, if such court lacks subject matter jurisdiction, in the Superior Court of the State of Delaware), so long as one of such courts shall have subject-matter jurisdiction over such suit, action or proceeding, and that any case of action arising out of this Agreement shall be deemed to have arisen from a transaction of business in the State of Delaware. Each of the parties hereby irrevocably

consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

26. Enforcement.

(a) Without limiting Section 15, this Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof.

(b) The Company shall not seek from a court, or agree to, a "bar order" which would have the effect of prohibiting or limiting the Indemnitee's rights to receive advancement of Expenses under this Agreement other than in accordance with this Agreement.

27. Headings and Captions. All headings and captions contained in this Agreement and the table of contents hereto are inserted for convenience only and shall not be deemed a part of this Agreement.

28. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one and the same agreement. Facsimile counterpart signatures to this Agreement shall be binding and enforceable.

29. Guaranty By Debtor. The Debtor guarantees to Indemnitee the performance of the obligations of the Company hereunder (the "**Guaranteed Obligations**"). If the Company does not satisfy any of the Guaranteed Obligations when due, Indemnitee may demand that the Debtor satisfy such obligations and the Debtor shall be required to do so by making payment to, or for the benefit of, Indemnitee. Indemnitee can make any number of demands upon the Debtor and such demands can be made for all or part of the Guaranteed Obligations. This guaranty by the Debtor is for the full amount of the Guaranteed Obligations. The Debtor's obligations under this Agreement are continuing. Even though Indemnitee receives payments from or makes arrangements with the Company or anyone else, the Debtor shall remain liable for the Guaranteed Obligations until satisfied in full. The guaranty hereunder is a guaranty of payment, and not merely of collectability, and may be enforced against the Debtor. The Debtor's liability under this Section 29 is unconditional. It is not affected by anything that might release the Debtor from or limit all or part of its obligations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

STRAND ADVISORS, INC.

By: _____
Name:
Title:

HIGHLAND CAPITAL MANAGEMENT,
LP (solely as to Section 29 hereunder)

By: _____
Name:
Title:

INDEMNITEE:

Name: [_____]

Address: _____

Email: _____

Exhibit B

Amended DSI Retention Letter

January __, 2020

Attn: Independent Directors
Highland Capital Management, LP
300 Crescent Court, Ste. 700
Dallas, TX 75201

Re: Development Specialists, Inc. (“DSI”)
Retention and Letter of Engagement

Dear Members of the Board:

Please accept this letter as our firm’s formal written agreement (the “Agreement”) to provide restructuring support services to Highland Capital Management, L.P. (the “Company”). This Agreement replaces and supersedes in all respects the letter agreement between DSI and the Company, dated October 7, 2019, as amended and revised by the letter agreement dated October 29, 2019. However, all fees and expenses incurred by DSI prior to the date hereof in accordance with such prior letter agreements will be paid by the Company, subject to allowance of such fees and expenses by the U.S. Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”). The Agreement will become effective upon execution by duly authorized representatives of the respective parties and approval of the Bankruptcy Court.

Section 1 – Scope of Work

DSI will provide the following services (the “Services”) to the Company:

1. Bradley D. Sharp will act as the Company’s Chief Restructuring Officer (“CRO”) with other DSI personnel to assist Mr. Sharp in carrying out those duties and responsibilities.
2. Subject to the terms of this Agreement, Mr. Sharp will report to the Independent Directors and, if appointed, the Chief Executive Officer of the Company (“CEO”) and will comply with the Company’s corporate governance requirements.
3. Mr. Sharp will fulfill such duties as directed by the Independent Directors and/or CEO, if any, of the Company with respect to the Company’s restructuring and bankruptcy filed on October 16, 2019 (the “Chapter 11 Case”), including implementation and prosecution of the Chapter 11 Case.
4. Provide other personnel of DSI (“Additional Personnel”) to provide restructuring support services as requested or required to the Company, which may include but are not limited to:
 - a. assisting the Company in the preparation of financial disclosures required by the Bankruptcy Code, including the Schedules of Assets and Liabilities, the Statements of Financial Affairs and Monthly Operating Reports;

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- b. advising and assisting the Company, the Company's legal counsel, and other professionals in responding to third party requests;
- c. attending meetings and assisting in communications with parties in interest and their professionals, including the Official Committee of Unsecured Creditors appointed in the Chapter 11 Case;
- d. providing litigation advisory services with respect to accounting matters, along with expert witness testimony on case related issues; and
- e. rendering such other general business consulting services or other assistance as the Company may deem necessary and which are consistent with the role of a financial advisor and not duplicative of services provided by other professionals in this case.

DSI's ability to adequately perform the Services is dependent upon the Company timely providing reliable, accurate, and complete necessary information. The Company agrees that CRO will have (i) access to and the ability to communicate with any employee of the Company or any affiliate of the Company and (ii) access to any information, including documents, relating to the Company or any Company affiliate, including, but not limited to, information concerning collections and disbursements. The Company acknowledges that DSI or CRO are not responsible for independently verifying the veracity, completeness, or accuracy of any information supplied to us by or on behalf of the Company.

DSI will submit its evaluations and analyses pursuant to this Agreement in periodic oral and written reports. Such reports are intended to and shall constitute privileged and confidential information, and shall constitute the Company's property.

Although we do not predict or warrant the outcome of any particular matter or issue, and our fees are not dependent upon such outcomes, we will perform the Services with reasonable care and in a diligent and competent manner.

Section 2 – Rates, Invoicing and Retainer

DSI will be compensated at a rate of \$100,000 per month, plus expenses (capped at \$10,000 per month), for the services of Bradley D. Sharp as CRO and such DSI personnel (including Fred Caruso) as are required to fulfill Mr. Sharp's responsibilities as CRO; provided that if any single expense exceeds \$1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

A number of DSI's personnel have experience in providing restructuring support services and may be utilized as Additional Personnel in this representation. Although others of our staff may also be involved, we have listed below certain of the DSI personnel (along with their corresponding billing rates) who would likely constitute the Additional Personnel. The individuals are:

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R. Brian Calvert	\$640.00/hr.
Thomas P. Jeremiassen	\$575.00/hr.
Eric J. Held	\$495.00/hr.
Nicholas R. Troszak	\$485.00/hr.
Spencer G. Ferrero	\$350.00/hr.
Tom Frey	\$325.00/hr.

The above rates are adjusted as of January 1 of each year to reflect advancing experience, capabilities, and seniority of our professionals as well as general economic factors.

We acknowledge receipt of a retainer of \$250,000 from the Company. The purpose of the retainer is to secure a portion of our fees and expenses and to retain our status as a non-creditor should such be required for DSI to continue to provide the Services. As such, should a need arise to increase this retainer due to the level of Services DSI is providing or projected to provide, we will send the Company a supplement to this Agreement requesting the necessary increases and discuss with the Company the amount and timing of providing such increase to the retainer.

This retainer will be applied to our final invoice. If the retainer exceeds the amount of our final invoice, we will refund the difference to the Company at that time. In the event that periodic invoices are not paid timely, we will apply the retainer to the amounts owing on such invoices and, if applicable, any related late charges, and we will stop work until the retainer is replenished to the full amount required. If the retainer is not replenished within ten (10) days after the application of the retainer to unpaid balances, we reserve the right to terminate this Agreement in accordance with the provisions of Section 3 of this Agreement.

DSI also will be entitled to reimbursement for its reasonable costs and expenses. Such costs and expenses may include, among others, charges for messenger services, photocopying, travel expenses, long distance telephone charges, postage and other charges customarily invoiced by consulting firms. Airfare for international flights will be charged at the business class fare; provided that if any single expense exceeds \$1,000, DSI will provide reasonable documentation and will obtain the Company's prior written approval.

This Agreement shall be presented to the Bankruptcy Court for approval and continuation, pursuant to Bankruptcy Code Section 363 and DSI's then-prospective obligations shall be contingent upon such approval.

Section 3 – Termination

Either the Company or DSI may terminate this Agreement for any reason with ten (10) business days' written notice. Notwithstanding anything to the contrary contained herein, the Company

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shall be obligated, in accordance with any orders of or procedures established by the Court, to pay and/or reimburse DSI all fees and expenses accrued under this Agreement as of the effective date of the termination.

Section 4 – Relationship of the Parties, Confidentiality

DSI will provide the Services to and for the Company, with select members of DSI assigned to specific roles for the benefit of the Company. These members will remain as DSI employees during the pendency of this case. Specifically, the parties intend that an independent contractor relationship will be created by this Agreement. Employees of DSI are not to be considered employees of the Company and are not entitled to any of the benefits that the Company provides for the Company's employees.

The Company acknowledges that all advice (written or oral) given by DSI to the Company in connection with DSI's engagement is intended solely for the benefit and use of the Company in considering the transaction to which it relates, and that no third party is entitled to rely on any such advice or communication. DSI will in no way be deemed to be providing services for any person not a party to this Agreement.

DSI agrees that all information not publicly available that is received by DSI from the Company in connection with this Agreement or that is developed pursuant to this Agreement, will be treated as confidential and will not be disclosed by DSI, except as required by Court order, or other legal process, or as may be authorized by the Company. DSI shall not be required to defend any action to obtain an order requiring disclosure of such information, but shall instead give prompt notice of any such action to the Company so that it may seek appropriate remedies, including a protective order. The Company shall reimburse DSI for all costs and fees (including reasonable attorney's fees) incurred by DSI relating to responding to (whether by objecting to or complying with) any subpoenas or requests for production of information or documents.

Section 5 – Indemnity

The Company shall name Bradley D. Sharp as its Chief Restructuring Officer and shall indemnify him on the same terms as provided to the Company's other officers and directors under the Company partnership agreement or other governing document and applicable state law. Mr. Sharp shall be included as an insured under any insurance policies or coverage available to officers and directors of the Company.

The Company shall additionally indemnify those persons, and only those persons, serving as executive officers on the same terms as provided to the Company's other officers and directors under the Company's partnership agreement or other governing document and applicable state law, along with insurance coverage under the Company's D&O policies. Any such indemnity shall survive the expiration or termination by either party of this Agreement. Except as provided

Highland Capital Management, LP
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in this Section and in Section 4, there shall be no indemnification of DSI, its affiliates or the Additional Personnel.

Each and every one of the personnel employed by DSI who works on this particular project, as well as DSI officers, directors, employees and agents (the “DSI Parties”) shall not be liable to the Company, or any party asserting claims on behalf of the Company, except for direct damages found in a final determination (not subject to further appeal) by a court of competent jurisdiction to be the direct result of the bad faith, self-dealing or intentional misconduct or gross negligence of DSI.

Section 6 – Conflicts

DSI has made diligent inquiries to determine whether it or any of its professionals have any connections with the Company, its creditors, or other parties in interest in the Chapter 11 Case. Based on that review, the review of DSI’s conflict files and responses to inquiries from DSI’s professional staff, neither DSI nor its professionals have any known conflicts with the parties in this case. DSI will separately provide its connections to parties in this case and/or their professionals.

Section 7 – No Audit

The Company acknowledges that it is hiring DSI to assist and advise the Company in business planning and operations. DSI’s engagement shall not constitute an audit, review or compilation, or any other type of financial statement reporting engagement that is subject to the rules of AICPA or other such state and national professional bodies.

Section 8 – Non-Solicitation

The Company agrees not to solicit, recruit or hire any employees or agents of DSI for a period of one year subsequent to the completion and/or termination of this Agreement; provided that the Company shall not be prohibited from (x) making general advertisements for employment not specifically directed at employees of DSI or (y) employees of DSI responding to unsolicited requests for employment.

Section 9 – Survival

The provisions of this Agreement relating to indemnification, the non-solicitation or hiring of DSI employees, and all other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.

Section 10 – Governing Law

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This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to conflicts of law principles.

Section 11 – Entire Agreement, Amendment

This Agreement contains the entire understanding of the parties relating to the subject matter of this Agreement and supersedes and is intended to nullify any other agreements, understandings or representations relating to the subject of this Agreement. This Agreement may not be amended or modified except in a writing signed by the parties.

If you are in agreement with the foregoing terms and conditions please indicate your acceptance by signing an original copy of this Agreement on the signature lines below, then returning one fully-executed Agreement to DSI’s office. The Agreement will become effective upon execution by duly authorized representatives of the respective parties.

Very truly yours,

Bradley Sharp
Development Specialists, Inc.

AGREED AND ACKNOWLEDGED:

Highland Capital Management, L.P.
By: Strand Advisors, Inc., its general partner

By: _____, Independent Director
Date: _____

Exhibit C

Document Production Protocol

A. Definitions

- a. Electronically stored information” or “ESI” shall include all electronic files, documents, data, and information covered under the Federal Rules of Civil Procedure.

B. Preservation of ESI - Generally

- a. Debtor acknowledges that they should take reasonable and proportional steps to preserve discoverable information in the party’s possession, custody or control. This includes notifying employees possessing relevant information of their obligation to preserve such data.

C. Preservation of ESI – Specific Forms

- a. For email, Debtor uses Outlook Email on an Exchange server. Veritas Enterprise Vault is used to archive emails. Journaling is and has been in active use since 2007, and all inbound, outbound, and in-system email communications have been preserved and are not at risk of deletion due to normal document retention practices. Out of an abundance of caution, a copy of the latest email back-up, which was performed two months ago, shall be copied and stored at a secured location.
- b. The file server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created and stored on a portable hard drive at a secured location.
- c. The Sharepoint server used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format that maintains all potentially relevant information and stored at a secured location.
- d. The Oracle E-Business Suite (EBS) server used by Debtor was backed up one week ago. A copy of this backup shall be created in a format and stored at a secured location.
- e. The Advent Geneva accounting system used by Debtor was backed up approximately one week ago. Upon reasonable notice, the Committee may submit search criteria to Debtor to run searches in Advent Geneva. Subject to Debtor’s rights to assert objections as provided by Part G herein, Debtor will provide the data resulting from such agreed searches pursuant to Part F herein.
- f. The Siepe Database (data warehouse) used by Debtor was backed up approximately one week ago. A copy of this backup shall be created in a format and stored at a secured location.
- g. For the Box account used by Debtor, to the extent routine data retention practices may result in file deletion, they shall be suspended pending further discussion with the Committee concerning the relevance of such data. Users of the Box account who have the ability to delete files shall be notified of the obligation to suspend deletion of any data stored in Box.
- h. Bloomberg data is archived for five years. Debtor shall work with Bloomberg client services to preserve a copy of all such archived material, which shall be stored at a secured location, or otherwise extend the backup window in which Bloomberg preserves the data by reasonable time to be agreed by the parties.

- i. Files may be saved locally on laptops/work computers used by employees of Debtor. This practice is discouraged, but may result in the creation of relevant ESI on local systems in a manner that will not be replicated elsewhere. Debtor shall therefore cease the deletion of data (*i.e.*, wiping) of any employee-assigned computer hard drives, such as for departing employees. Debtor shall furthermore instruct current employees not to delete files stored locally on their assigned computers.

D. Not Reasonably Accessible Documents

- a. Absent an order from the Court upon a showing of good cause, a Party from whom ESI has been requested shall not be required to search for responsive ESI from sources that are not reasonably accessible without undue burden or cost. The following types of data stores are presumed to be inaccessible and are not subject to discovery, and need not be collected or preserved, absent a particularized need for the data as established by the facts and legal issues of the case:
 - i. Deleted, slack, fragmented, or other data only accessible by forensics;
 - ii. Random access memory (RAM), temporary files, or other ephemeral data that are difficult to preserve without disabling the operating system; and
 - iii. On-line access data such as temporary internet files, history, cache, cookies, and the like.
- b. To conduct collections in a focused and efficient manner, the Parties also agree to exclude the following file types from collection: Standard system file extensions including, but not limited to, BIN, CAB, CHK, CLASS, COD, COM, DLL DRV, EXE, INF, INI, JAVA, LIB, LOG, SYS and TMP and other file extensions and directories that likely do not contain user generated content such as files identified by hash value when compared to the National Software Reference Library reference data set (RDS Hash), a sub-project of the National Institute of Standards and Technology (“NIST”), of known traceable system and application files. This process is commonly referred to as “De-NISTing.”

E. Collection and Search Methodology

- a. Searches for emails in Debtor’s custody shall be conducted by DSI on Debtor’s Veritas Enterprise Vault storage using an unrestricted account at the earliest opportunity, but in no event later than seven (7) days after the Committee requests ESI from the Debtor. DSI shall use an add-on component called Discovery Assistant, which enables searches based on email properties, such as senders, recipients, and dates. Discovery Assistant also permits text searching of email contents and the contents of electronic file attachments, although not pictures of text (*e.g.*, scanned PDFs). Debtor did not employ employee message or file encryption that would prevent reasonable operation of the Discovery Assistant search capabilities.
- b. The results of email searches shall be produced to the Committee pursuant to Part F below, subject to completion of any review for privilege or other purposes contemplated by this Agreement.

- c. A snapshot copy of Debtor databases (Oracle, Siepe) shall be created in a format to be specified later by agreement with the Committee per Part (C)(d), (f), above. Prior to any production of responsive data from such a structured database Debtor will first identify the database type and version number, provide the vendor-originated database dictionary, if any, (identifying all tables in the database, their fields, the meaning of those fields, and any interrelation among fields) and any user manuals, or any other documentation describing the structure and/or content of the database, and a list of all reports that can be generated from the database. The list of reports shall be provided in native Excel (.xis or .xlsx) format.
- d. The Geneva system is highly proprietary and shall not be collected, but the Committee will be given reasonable access to that system per Part C(e), above.
- e. Debtor and Committee will meet and confer to discuss the scope of any necessary searches on the Box account.
- f. Debtor file server contents, where requested by the Committee, shall be produced pursuant to Part F below.
- g. Debtor shall propose a format for producing Sharepoint data. The Committee agrees that it is not necessary to reproduce the interface used by Debtor in the ordinary course of business for Sharepoint.

F. Format of Documents Produced

- a. Non-database ESI shall be produced as black and white Group 4 TIFF files, with a resolution of 300 DPI. Page size shall be 8.5 x 11 inches unless, in the reasonable judgment of the Producing Party, a particular item requires a different page size, and original document orientation shall be maintained (i.e., portrait to portrait and landscape to landscape). A Requesting Party may, in good faith and reasonable judgment, request a color copy of a production document if it is necessary to convey the relevant and responsive information. Such color copies may be produced as single page JPG (JPEG) image files. The Requesting Party will bear the costs for color images.
- b. The files shall be accompanied by a metadata load file, in a single standard format to be requested by the Receiving Party prior to any production (e.g., Opticon, Summation DII, or the like) showing the Bates number of each page, the appropriate unitization of the documents, and the entire family range. The Parties agree to meet and confer regarding the requested standard format prior to production.
- c. The files shall be accompanied by a .DAT text file including the delimited fields identified in the Metadata List (below). No Party will have any obligation to manually generate information to provide the fields identified in the Metadata List.
- d. The Producing Party reserves the right to make hard copy documents available for inspection and copying pursuant to Federal Rule of Civil Procedure 34.
- e. In the event that a Party identifies hard copy documents for production, hard copy paper documents shall be scanned and will include, to the extent feasible, the following fields in the .DAT text file: PRODBEG, PRODEND, PAGECOUNT, FULLTEXT, and CUSTODIAN. The Parties agree to share equally in the cost of scanning hard copy documents.

- f. For any documents that were scanned from hard copy paper documents, the Parties will produce images of hard copy documents unitized to the extent the original documents appeared to be units in physical form, with attachments following parents, and with information that identifies the holder (or container) structure, to the extent such structure exists and it is reasonable to do so. The Producing Party is not required to OCR (Optical Character Recognition) hard copy documents. If the Receiving Party requests that hard copy documents be OCR'ed, the Receiving Party shall bear the cost of such request, unless the Parties agree to split the cost so that each has an OCR'ed copy of the documents.
- g. For ESI that the Producing Party produces in TIFF or JPEG format, the Producing Party shall electronically "burn" a legible, unique Bates number onto each page. The Bates number shall, to the extent reasonably possible: (1) identify the Producing Party; (2) maintain a constant length of nine numeric digits (including 0-padding) across the entire production; (3) contain only alphanumeric characters, no special characters or embedded spaces; and (4) be sequential within a given document. If the Bates number conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.
- h. For ESI that the Producing Party produces in TIFF format, if the Producing Party is producing the ESI subject to a claim that it is protected from disclosure under any confidentiality order entered in this matter, the Producing Party shall electronically "burn" the appropriate confidentiality designation onto each page of the document. If the designation conceals, interferes with, or otherwise obscures any information from the source document, the Producing Party, at the request of the Receiving Party, shall produce a copy that is not obscured.
- i. The Parties agree to produce e-mail families intact absent a privilege or work product claim, so long as each document contains responsive information; for all documents that contain a responsive, non-privileged attachment, the following fields will be produced (if available) as part of the metadata load file to indicate the parent child or parent/sibling relationship:
 - i. Production Bates begin
 - ii. Production Bates end
 - iii. Production Bates begin attachment
 - iv. Production Bates end attachment

Notwithstanding the aforementioned, all parties acknowledge that Debtor's Veritas Enterprise Vault system does not have the ability to search for the family members of responsive documents, and that Debtor does not have an obligation to manually search for non-responsive family members of otherwise responsive documents.

- j. Unless otherwise agreed, all dynamic date and time fields, where such fields are processed to contain a value, and all metadata pertaining to dates and times, will be standardized to Universal Coordinated Time (UTC) or Universal Coordinated Time + 1 (UTC+1) [TBD]. The Parties understand and acknowledge that such standardization affects only dynamic fields and metadata values and does not affect, among other things, dates and times that are hard-coded text within a file. Dates and times that are hard-coded text within a file (for example, in an email

thread, dates and times of earlier messages that were converted to body text when subsequently replied to or forwarded; and in any file type, dates and times that are typed as such by users) will be produced as part of the document text in accordance with the provisions herein.

- k. Excel spreadsheets shall be produced in native application format, unless redactions are required. The Producing Party will make reasonable efforts to provide a TIFF image of a slip sheet with the Bates number of documents produced natively in its production. The corresponding native file shall be named by using the same Bates number identified on the placeholder TIFF image. Any Excel spreadsheet that requires redaction will be produced in TIFF format only. Certain types of databases are dynamic in nature and may contain information that is irrelevant. These files are sometimes large and would, if rendered to TIFF images completely, produce thousands of pages that would have little utility to a reviewer without the associated database.
- l. To the extent information from a structured data repository, such as a database, is requested, responsive information will be produced via a report or export of such data to an appropriate program that is agreeable to the requesting Party. The Parties agree to meet and confer before such data is exported.

G. Production Format Shall Not Alter Authenticity, Admissibility, or Privilege Status

- a. No Party shall object that ESI produced pursuant to this Protocol is not authentic by virtue of the ESI having been converted to TIFF. The Parties otherwise reserve all rights regarding their ability to object to the authenticity of documents.
- b. Nothing in this Protocol shall be construed to affect in any way the rights of any Party to make any objection as to the production, discoverability, admissibility, or confidentiality of documents and ESI.
- c. Nothing in this Protocol shall constitute a waiver by any Party of any claim or privilege or other protection from discovery.
- d. Nothing in this Protocol shall be interpreted to in any way limit a Producing Parties right and ability to review documents for responsiveness prior to production.
- e. Nothing in the Protocol shall require disclosure of irrelevant information or relevant information protected by the attorney-client privilege, work-product doctrine, or any other applicable privilege or immunity.

Metadata List

File Name	Field Description	Sample Values
BegBates	Bates number for the first page of the document	ABC-0000001
EndBates	Bates number for the last page of the document	ABC-0000002
BegAttach	Bates number for the first page of parent document	ABC-0000001
EndAttach	Bates number for the last page of last attachment	ABC-0000005
Pages	Number of printed pages of the	2

	document	
Global Custodian	Custodian name produced in format: Lastname, Firstname.	Smith, Jane; Taylor, Michael
Confidentiality	Indicates if the document has been designated as “Confidential” or “Highly Confidential” pursuant to the applicable Protective Order	Confidential; Highly Confidential
Redacted	Descriptor for documents that have been redacted: “Yes” for redacted documents; “No” for non-redacted documents	Yes
Email Subject	Subject line of Email or	Text of the subject line
Document Subject	Subject value of documents	Text of the subject line
Date Sent	Date email sent	mm/dd/yyyy
Time Sent	Time email sent	hh:mm:ss AM
Date Last Modified	Date document was last modified	mm/dd/yyyy
Time Last Modified	Time document was last modified	hh:mm:ss AM
Date Created	Date document was first created	mm/dd/yyyy
To	All SMTP address of email recipients, separated by a semi-colon	Larry.murphy@email.com
From	All SMTP address of email author	Bart.cole@email.com
CC	All SMTP address of email “CC” recipients, separated by a semi-colon	Jim.James@gmail.com; bjones@yahoo.com
BCC	All SMTP address of email “BCC” recipients, separated by a semi-colon	mjones@gmail.com
Attach	The file name(s) of the documents attached to emails or embedded in files. Multiple files should be delimited by a semicolon	Filename.doc; filename2.doc
Title	The Title property of a file.	Title
Author	The Author property of a file	John Doe
MessageID	The email message ID	
FILENAME	The original name of the file excluding the path	C:\My Documents\letter.doc
DocType	Email, letter, memo, invoice, etc., if available	
Extension	The file extension	.doc

FileType	The actual file type of the document (Word, Excel, etc.) regardless of the file extension	
HashValue	MD5 Hash value of original file	
FilePath	The directory structure of the original file.	C:\My Documents\ letter.doc
PathToNative	The relative path to a produced native document	C:\VOL001\BATES000000001.xls
PathToText	The relative path to the accompanying text file	C:\VOL001\BATES000000001.txt
Volume	The production number or reference from the production	
Other Custodian	To the extent global deduplication is used, the field indicates the other custodians who also were in possession of the document at the time of collection	

Exhibit D

Reporting Requirements

I. **Definitions**

- A. “Court” means the United States Bankruptcy Court for the Northern District of Texas.
- B. “NAV” means (A) with respect to an entity that is not a CLO, the value of such entity’s assets less the value of its liabilities calculated as of the month end prior to any Transaction; and (B) with respect to a CLO, the CLO’s gross assets less expenses calculated as of the quarter end prior to any Transaction.
- C. “Non-Discretionary Account” means an account that is managed by the Debtor pursuant to the terms of an agreement providing, among other things, that the ultimate investment discretion does not rest with the Debtor but with the entity whose assets are being managed through the account.
- D. “Related Entity” means collectively (A)(i) any non-publicly traded third party in which Mr. Dondero, Mr. Okada, or Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor) has any direct or indirect economic or ownership interest, including as a beneficiary of a trust; (ii) any entity controlled directly or indirectly by Mr. Dondero, Mr. Okada, Mr. Grant Scott, or Mr. John Honis (with respect to Messrs. Okada, Scott and Honis, only to the extent known by the Debtor); (iii) MGM Holdings, Inc.; (iv) any publicly traded company with respect to which the Debtor or any Related Entity has filed a Form 13D or Form 13G; (v) any relative (as defined in Section 101 of the Bankruptcy Code) of Mr. Dondero or Mr. Okada each solely to the extent reasonably knowable by the Debtor; (vi) the Hunter Mountain Investment Trust and Dugaboy Investment Trust; (vii) any entity or person that is an insider of the Debtor under Section 101(31) the Bankruptcy Code, including any “non-statutory” insider; and (viii) to the extent not included in (A)(i)-(vii), any entity included in the listing of related entities in **Schedule B** hereto (the “Related Entities Listing”); and (B) the following Transactions, (x) any intercompany Transactions with certain affiliates referred to in paragraphs 16.a through 16.e of the Debtor’s cash management motion [Del. Docket No. 7]; and (y) any Transactions with Charitable DAF Fund, L.P. (provided, however, that additional parties may be added to this subclause (y) with the mutual consent of the Debtor and the Committee, such consent not to be unreasonably withheld).
- E. “Stage 1” means the time period from the date of execution of a term sheet incorporating the protocols contained below the (“Term Sheet”) by all applicable parties until approval of the Term Sheet by the Court.
- F. “Stage 2” means the date from the appointment of a Board of Independent Directors at Strand Advisors, Inc. until 45 days after such appointment, such appointment being effective upon Court approval.
- G. “Stage 3” means any date after Stage 2 while there is a Board of Independent Directors at Strand Advisors, Inc.
- H. “Transaction” means (i) any purchase, sale, or exchange of assets, (ii) any lending or borrowing of money, including the direct payment of any obligations of another entity, (iii) the satisfaction of any capital call or other contractual

requirement to pay money, including the satisfaction of any redemption requests, (iv) funding of affiliates and (v) the creation of any lien or encumbrance.

- I. "Ordinary Course Transaction" means any transaction with any third party which is not a Related Entity and that would otherwise constitute an "ordinary course transaction" under section 363(c) of the Bankruptcy Code.
- J. "Notice" means notification or communication in a written format and shall include supporting documents necessary to evaluate the propriety of the proposed transaction.

II. Transactions involving the (i) assets held directly on the Debtor's balance sheet or the balance sheet of the Debtor's wholly-owned subsidiaries, including Jefferies Prime Account, and (ii) the Highland Select Equity Fund, L.P., Highland Multi Strategy Credit Fund, L.P., and Highland Restoration Capital Partners

A. **Covered Entities:** N/A (See entities above).

B. Operating Requirements

- 1. Ordinary Course Transactions do not require Court approval (All Stages).
 - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
 - b) Stage 3: ordinary course determined by the Debtor.
- 2. Related Entity Transactions
 - a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
 - b) Stage 3:
 - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
 - (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.
- 3. Third Party Transactions (All Stages)
 - a) Except as set forth in (b) and (c) below, Transactions in excess of \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the

Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

- b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
- c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

C. **Weekly Reporting:** The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

III. Transactions involving entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above)

A. **Covered Entities:** See **Schedule A** hereto. **Schedule A** includes or will include all entities the Debtor manages and in which the Debtor holds a direct or indirect interest (other than the entities discussed in Section I above).¹

B. Operating Requirements

- 1. Ordinary Course Transactions do not require Court approval (All Stages).
 - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
 - b) Stage 3: ordinary course determined by the Debtor.
- 2. Related Entity Transactions
 - a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
 - b) Stage 3:
 - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on

¹ The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

- (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages)

- a) Except as set forth in (b) and (c) below, Transactions in excess of \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require three business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
- b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
- c) The Debtor may satisfy margin calls and short covers without providing the Committee advance notice if the exigencies do not allow advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable.

- C. **Weekly Reporting:** The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

IV. Transactions involving entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

- A. **Covered Entities:** See Schedule A hereto. Schedule A includes or will include all entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest.²

B. **Operating Requirements**

1. Ordinary Course Transactions do not require Court approval (All Stages).
 - a) Stage 1 and Stage 2: ordinary course determined by the CRO.
 - b) Stage 3: ordinary course determined by the Debtor.

² The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

2. Related Entity Transactions

- a) Stage 1 and Stage 2: Transactions with Related Entities require prior approval of CRO and five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
- b) Stage 3:
 - (1) Transactions with Related Entities greater than \$1,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require five business days advance notice to the Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
 - (2) Transactions with Related Entities greater than \$2,000,000 (either individually or in the aggregate basis on a rolling 30 day period) require Court approval, which the Committee agrees may be sought on an expedited basis.

3. Third Party Transactions (All Stages):

- a) Except as set forth in (b) and (c) below, any Transaction that decreases the NAV of an entity managed by the Debtor in excess of the greater of (i) 10% of NAV or (ii) \$3,000,000 requires five business days advance notice to Committee and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
- b) The Debtor may satisfy any redemption requests from entities that are not Related Entities without advance notice so long as the Debtor provides notice of such Transactions to the Committee as soon as reasonably practicable. The Debtor will provide the Committee with five business days advance notice of any redemption requests made by and payable to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.
- c) The Debtor may take such steps as may be reasonably necessary to winddown any managed entity and make distributions as may be required in connection with such winddown to any required parties. The Debtor will provide the Committee with five business days advance notice of any distributions to be made to a Related Entity, and if the Committee objects, the burden is on the Debtor to seek Court approval, which the Committee agrees may be sought on an expedited basis.

C. **Weekly Reporting:** The Debtor will provide the Committee with weekly reports showing all Transactions under this category.

V. Transactions involving entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

- A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest.³
- B. Ordinary Course Transactions (All Stages): N/A
- C. Operating Requirements: N/A
- D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VI. Transactions involving entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

- A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest.⁴
- B. Ordinary Course Transactions (All Stages): N/A
- C. Operating Requirements: N/A
- D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

VII. Transactions involving Non-Discretionary Accounts

- A. Covered Entities: See **Schedule A** hereto. **Schedule A** includes or will include all non-discretionary accounts.⁵
- B. Ordinary Course Transactions (All Stages): N/A
- C. Operating Requirements: N/A
- D. Weekly Reporting: Debtor will provide weekly reports of all cross-held asset Transactions, i.e. Transactions in which the Debtor or a Related Entity also holds a direct or indirect interest.

³ The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

⁴ The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

⁵ The Debtor is continuing to review the Related Entities List and to determine whether any additional parties or entities should be included on Schedule A. The Debtor will update Schedule A as soon as reasonably practicable to the extent necessary.

VIII. Additional Reporting Requirements – All Stages (to the extent applicable)

- A. DSI will provide detailed lists and descriptions of internal financial and operational controls being applied on a daily basis for a full understanding by the Committee and its professional advisors three (3) business days in advance of the hearing on the approval of the Term Sheet and details of proposed amendments to said financial and operational controls no later than seven (7) days prior to their implementation.
- B. The Debtor will continue to provide weekly budget to actuals reports referencing their 13-week cash flow budget, such reports to be inclusive of all Transactions with Related Entities.

IX. Shared Services

- A. The Debtor shall not modify any shared services agreement without approval of the CRO and Independent Directors and seven business days' advance notice to counsel for the Committee.
- B. The Debtor may otherwise continue satisfying its obligations under the shared services agreements.

X. Representations and Warranties

- A. The Debtor represents that the Related Entities Listing included as **Schedule B** attached hereto lists all known persons and entities other than natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.
- B. The Debtor represents that the list included as **Schedule C** attached hereto lists all known natural persons included in the definitions of Related Entities covered by Section I.D parts A(i)-(vii) above at the time of the execution of the Term Sheet.
- C. The Debtor represents that, if at any time the Debtor becomes aware of any person or entity, including natural persons, meeting the definition of Related Entities covered by Section I.D parts A(1)-(vii) above that is not included in the Related Entities Listing or Schedule C, the Debtor shall update the Related Entities Listing or Schedule C, as appropriate, to include such entity or person and shall give notice to the Committee thereof.

Schedule A⁶

Entities the Debtor manages and in which the Debtor holds a direct or indirect interest

1. Highland CLO Funding, Ltd. (0.63% Ownership Interest)
2. Dynamic Income Fund (0.26% Ownership Interest)

Entities that the Debtor manages but in which the Debtor does not hold a direct or indirect interest

1. Highland Prometheus Master Fund L.P.
2. NexAnnuity Life Insurance Company
3. PensionDanmark
4. Highland Argentina Regional Opportunity Fund
5. Longhorn A
6. Longhorn B
7. Collateralized Loan Obligations
 - a) Rockwall II CDO Ltd.
 - b) Grayson CLO Ltd.
 - c) Eastland CLO Ltd.
 - d) Westchester CLO, Ltd.
 - e) Brentwood CLO Ltd.
 - f) Greenbriar CLO Ltd.
 - g) Highland Park CDO Ltd.
 - h) Liberty CLO Ltd.
 - i) Gleneagles CLO Ltd.
 - j) Stratford CLO Ltd.
 - k) Jasper CLO Ltd.
 - l) Rockwall DCO Ltd.
 - m) Red River CLO Ltd.
 - n) Hi V CLO Ltd.
 - o) Valhalla CLO Ltd.
 - p) Aberdeen CLO Ltd.
 - q) South Fork CLO Ltd.
 - r) Legacy CLO Ltd.
 - s) Pam Capital
 - t) Pamco Cayman

Entities that the Debtor does not manage but in which the Debtor holds a direct or indirect interest

1. Highland Opportunistic Credit Fund
2. Highland Healthcare Opportunities Fund f/k/a Highland Long/Short Healthcare Fund
3. NexPoint Real Estate Strategies Fund
4. Highland Merger Arbitrage Fund
5. NexPoint Strategic Opportunities Fund
6. Highland Small Cap Equity Fund
7. Highland Global Allocation Fund

⁶ NTD: Schedule A is work in process and may be supplemented or amended.

8. Highland Socially Responsible Equity Fund
9. Highland Income Fund
10. Stonebridge-Highland Healthcare Private Equity Fund (“Korean Fund”)
11. SE Multifamily, LLC

Entities that the Debtor does not manage and in which the Debtor does not hold a direct or indirect interest

1. The Dugaboy Investment Trust
2. NexPoint Capital LLC
3. NexPoint Capital, Inc.
4. Highland IBoxx Senior Loan ETF
5. Highland Long/Short Equity Fund
6. Highland Energy MLP Fund
7. Highland Fixed Income Fund
8. Highland Total Return Fund
9. NexPoint Advisors, L.P.
10. Highland Capital Management Services, Inc.
11. Highland Capital Management Fund Advisors L.P.
12. ACIS CLO Management LLC
13. Governance RE Ltd
14. PCMG Trading Partners XXIII LP
15. NexPoint Real Estate Partners, LLC f/k/a HCRE Partners LLC
16. NexPoint Real Estate Advisors II LP
17. NexPoint Healthcare Opportunities Fund
18. NexPoint Securities
19. Highland Diversified Credit Fund
20. BB Votorantim Highland Infrastructure LLC
21. ACIS CLO 2017 Ltd.

Transactions involving Non-Discretionary Accounts

1. NexBank SSB Account
2. Charitable DAF Fund LP

Schedule B

Related Entities Listing (other than natural persons)

Schedule C

1. James Dondero
2. Mark Okada
3. Grant Scott
4. John Honis
5. Nancy Dondero
6. Pamela Okada
7. Thomas Surgent
8. Scott Ellington
9. Frank Waterhouse
10. Lee (Trey) Parker

EXHIBIT 4

January 9, 2020

HAND DELIVERY

Highland Capital Management, L.P.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Resignation of James Dondero

To Whom It May Concern:

I, James Dondero, hereby give notice of my resignation as, and do resign as, the President and Chief Executive Officer of Highland Capital Management, L.P. (the "HCMLP").

My resignation is effective January 9, 2020.

Please ensure that HCMLP's records and any filings with any state or federal authorities are modified as necessary to reflect my resignation.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Dondero", written in a cursive style.

James Dondero

January 9, 2020

HAND DELIVERY

Strand Advisors, Inc.
300 Crescent Court, Suite 700
Dallas, Texas 75201

Re: Resignation of James Dondero

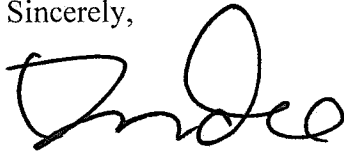
To Whom It May Concern:

I, James Dondero, hereby give notice of my resignation as, and do resign as: (1) an officer of Strand Advisors, Inc. (the "Company"), in any and all capacities now or formerly held by me, including as president, and (2) a director of the Company, including as Chairman of the Board of Directors.

My resignation is effective January 9, 2020.

Please ensure that the Company's records and any filings with any state or federal authorities are modified as necessary to reflect my resignation.

Sincerely,

A handwritten signature in black ink, appearing to read "Dondero", written in a cursive style.

James Dondero

EXHIBIT 5



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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

United States Bankruptcy Judge

Signed December 10, 2020

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

In re:	§	
HIGHLAND CAPITAL MANAGEMENT, L.P., ¹	§	Chapter 11
Debtor.	§	Case No. 19-34054-sgj1
HIGHLAND CAPITAL MANAGEMENT, L.P.,	§	
Plaintiff,	§	Adversary Proceeding
vs.	§	
JAMES D. DONDERO,	§	No. 20-03190-sgj
Defendant.	§	

**ORDER GRANTING DEBTOR'S MOTION
FOR A TEMPORARY RESTRAINING ORDER AGAINST JAMES DONDERO**

Having considered the *Debtor's Motion for a Temporary Restraining Order and*

¹ The Debtor's last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.



Preliminary Injunction against James Dondero [Docket No. 6] (the “Motion”), the *Memorandum of Law* (the “Memorandum of Law”)² in support of the Motion, and the *Declaration of James P. Seery, Jr. in Support of the Debtor’s Motion for a Temporary Restraining Order against James Dondero* [Docket No. 4] (the “Seery Declaration”), including the exhibits annexed thereto; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that injunctive relief is warranted under sections 105(a) and 362(a) of the Bankruptcy Code and that the relief requested in the Motion is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest; and this Court having found that the Debtor’s notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and that no other notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion and the Memorandum of Law establish good cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor and for the reasons set forth in the record on this Motion, it is **HEREBY ORDERED THAT**:

1. The Motion is **GRANTED** as set forth herein.
2. James Dondero is temporarily enjoined and restrained from (a) communicating (whether orally, in writing, or otherwise), directly or indirectly, with any Board member unless Mr. Dondero’s counsel and counsel for the Debtor are included in any such communication; (b) making any express or implied threats of any nature against the Debtor or any of its directors, officers, employees, professionals, or agents; (c) communicating with any of the Debtor’s

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Memorandum of Law.

employees, except as it specifically relates to shared services currently provided to affiliates owned or controlled by Mr. Dondero; (d) interfering with or otherwise impeding, directly or indirectly, the Debtor's business, including but not limited to the Debtor's decisions concerning its operations, management, treatment of claims, disposition of assets owned or controlled by the Debtor, and pursuit of the Plan or any alternative to the Plan; and (e) otherwise violating section 362(a) of the Bankruptcy Code (collectively, the "Prohibited Conduct").³

3. James Dondero is further temporarily enjoined and restrained from causing, encouraging, or conspiring with (a) any entity owned or controlled by him, and/or (b) any person or entity acting on his behalf, from, directly or indirectly, engaging in any Prohibited Conduct.

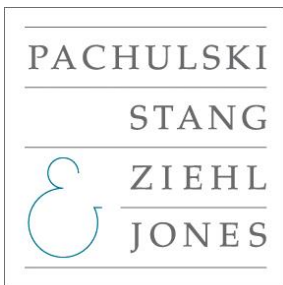
4. All objections to the Motion are overruled in their entirety.

5. The Court shall retain exclusive jurisdiction with respect to all matters arising from or relating to the implementation, interpretation, and enforcement of this Order.

END OF ORDER

³ For the avoidance of doubt, this Order does not enjoin or restrain Mr. Dondero from seeking judicial relief upon proper notice or from objecting to any motion filed in the above-referenced bankruptcy case.

EXHIBIT 6



LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

NEW YORK, NY
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DELAWARE
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17th FLOOR
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WILMINGTON
DELAWARE 19899-8705

TELEPHONE: 302/652 4100

FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

Gregory Demo

December 24, 2020

212-561-7700
gdemo@pszjlaw.com

Via E-mail

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111

A. Lee Hogewood III
K&L Gates LLP
4350 Lassiter at North Hills Ave.
Suite 300
Raleigh, North Carolina 27609

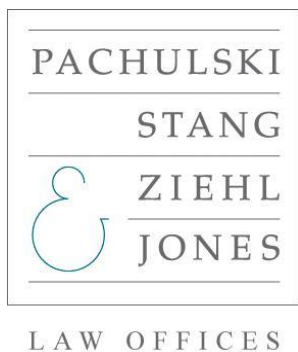
Re: *In re Highland Capital Management, L.P., Case No. 19-34054-sgj (Bankr. N.D. Tex)*

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the “Debtor”), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor’s Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles [D.I. 1528]* (the “Motion”)¹ on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the “Movants”). After hearing the sworn testimony of the Movants’ witness and the arguments made on the Movants’ behalf, Judge Jernigan found that the Motion was “a very, very frivolous motion” and that your firm “wasted [her]

¹ All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.



James A. Wright III
A. Lee Hogewood III
December 24, 2020
Page 2

time.” (Transcript, 64:5-12) An order was entered denying the Motion on December 18, 2020 [D.I. 1605].

On December 22, we received the letter attached as Exhibit A (the “Letter”) from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) re-asserting almost verbatim the frivolous arguments raised in the Motion. Concurrently, we received notice that certain of the Movants’ employees would not settle trades on behalf of the CLOs that were authorized by the Debtor acting in its capacity as the CLOs’ portfolio manager. The Movants’ employees who interfered with the Debtor’s directions justified their conduct by asserting – again almost verbatim – the frivolous arguments raised in the Motion.

The Movants have caused the Debtor to incur substantial costs defending itself against the Motion and preparing to defend against the frivolous suits forecasted in the Letter. The Debtor demands that the Movants withdraw the letter by 5:00 p.m. CT on Monday, December 28, 2020, and confirm that the Movants and anyone acting on their behalf will take no further steps to interfere with the Debtor’s directions as the CLOs’ portfolio manager. If the Movants fail to timely comply with these demands, the Debtor shall seek prompt judicial relief, including seeking sanctions under Federal Rule of Bankruptcy Procedure 9011.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,


Gregory Demo

Enclosure

cc: Jeffrey Pomerantz, Esq.
Ira Kharasch, Esq.
John Morris, Esq.
John J. Kane, Esq.

Exhibit A



K&L GATES

December 22, 2020

A. Lee Hogewood, III
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares¹:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

¹ These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

In other cases, such companies in combination with CLO Holdco hold all, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
- Stratford CLO, Ltd. 69.05%²
- Aberdeen Loan Funding, Ltd. 64.58%
- Grayson CLO, Ltd. 61.65%*
- Westchester CLO, Ltd. 58.13%
- Rockwall CDO, Ltd. 55.75%
- Brentwood CLO, Ltd. 55.74%
- Greenbriar CLO, Ltd. 53.44%*

Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

Contractually, the Debtor is obligated to maximize value for the benefit of the preference shareholders. Accordingly, we respectfully request that no further dispositions of CLO interests occur pending the confirmation hearing. While we recognize the Court denied the Advisor and Funds motion on this subject, the Court did not require liquidations occur immediately, and we reserve all rights to and remedies against the Debtor should the Debtor continue to liquidate CLO interests in contravention of this joint request. Given the Advisor, Funds, and CLO Holdco's requests, it is difficult to understand the Debtor's rationale for continued liquidations, or the benefit to the Debtor from pursuing those sales.

As you know, HCMLP's duties are set forth in the portfolio management agreements of the CLOs, which themselves have been adopted under the Investment Advisers Act of 1940 ("Advisers Act"). As HCMLP readily admits, it is: (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced those CLOs; (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan-confirmation; and (iii) adding a replacement manager as subadvisor prior to January 31, 2021. The Advisors, Funds, and CLO Holdco assert that those actions run in contravention to HCMLP's duty to maximize value for the holders of preference shares and thus what HCMLP has agreed to under the portfolio management agreement, as well as its duties under the Advisers Act, which ultimately will adversely impact the economic owners noted above.

² CLO's marked with an asterisk (*) appear in the foregoing list as well.

December 22, 2020

Page 3

For the forgoing and other reasons, we request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing.

Sincerely,

A. Lee Hogewood, III

A. Lee Hogewood, III

EXHIBIT 7



LAW OFFICES
LIMITED LIABILITY PARTNERSHIP

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SAN FRANCISCO, CA
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WILMINGTON
DELAWARE 19899-8705

TELEPHONE: 302/652 4100
FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

Gregory Demo

December 24, 2020

212-561-7700
gdemo@pszjlaw.com

Via E-mail

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111

A. Lee Hogewood III
K&L Gates LLP
4350 Lassiter at North Hills Ave.
Suite 300
Raleigh, North Carolina 27609

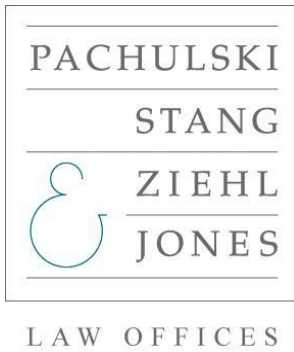
Re: *In re Highland Capital Management, L.P., Case No. 19-34054-sgj (Bankr. N.D. Tex)*

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the “Debtor”), the debtor-in-possession in the above-captioned bankruptcy case.

On December 8, 2020, your firm filed that certain *Motion for Order Imposing Temporary Restrictions on Debtor’s Ability, as Portfolio Manager, to Initiate Sales by Non-Debtor CLO Vehicles [D.I. 1528]* (the “Motion”)¹ on behalf of Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (collectively, the “Movants”). After hearing the sworn testimony of the Movants’ witness and the arguments made on the Movants’ behalf, Judge Jernigan was convinced that the Movants were in fact Mr. James Dondero seeking to disrupt

¹ All capitalized terms used but not defined herein shall have the meanings given to them in the Motion.



James A. Wright III
A. Lee Hogewood III
December 24, 2020
Page 2

HCMP's estate by using different controlled entities to accomplish his ends.

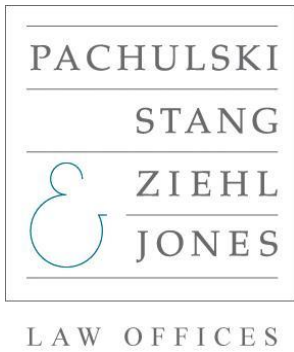
On December 23, we received the letter attached as Exhibit A (the "Letter") from your firm on behalf of the Movants and CLO Holdco, Ltd. (an entity affiliated with James Dondero) informing us that they were seeking to terminate certain CLO management agreements for "cause." For the reasons set forth herein, among others, such action is sanctionable under the circumstances and is otherwise prohibited by the CLOs' governing documents.

First, the Movants are owned and/or controlled by Mr. Dondero. These facts were disclosed in the Movants' public filings with the Securities and Exchange Commission and confirmed by Mr. Dustin Norris's testimony at the hearing held on December 16, 2020. Consequently, the Movants' attempt to terminate the CLO management agreements violates the order entered on January 9, 2020 [D.I. 339] (the "January Order"), which prohibits Mr. Dondero from "caus[ing] any Related Entity to terminate any agreements with the Debtor." A copy of the January Order is attached as Exhibit B.

Second, "cause" does not exist to terminate the CLO management agreements. The Debtor has a duty under the Investment Advisers Act of 1940 to the CLOs, not to any specific investor in the CLOs. *See, e.g., Goldstein v. SEC*, 451 F.3d 873, 881-82 (D.C. Cir. 2006) ("[t]he adviser owes fiduciary duties only to the fund, not to the fund's investors. . ."). The Debtor has, at all times, fulfilled its statutory and contractual duties to the CLOs and will continue to do so. As counsel, you have a duty to investigate the spurious allegations in your pleadings, but you failed to do so. Your clients' desire to re-assert control over the CLOs is not evidence to the contrary.

Third, the Movants, by their own admission, consider themselves affiliates of the Debtor. Under the management agreements, affiliates of a manager cannot replace a manager, and therefore, are prohibited from removing a manager.

Please confirm to us, in writing, no later than 5:00 p.m. CT on Monday, December 28, 2020, that you are withdrawing the Letter and that the Movants and CLO Holdco, Ltd., commit not to take any



James A. Wright III
A. Lee Hogewood III
December 24, 2020
Page 3

actions, either directly or indirectly, to terminate the CLO management agreements. If we do not receive such confirmation, the Debtor will seek immediate relief from the bankruptcy court, including an action for contempt for violating the January Order and sanctions under Federal Rule of Bankruptcy Procedure 9011 or otherwise.

The Debtor reserves all rights it may have, whether in law equity, or contract, including the right to seek reimbursement of any and all fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,

Gregory Demo

Enclosure

cc: Jeffrey Pomerantz, Esq.
Ira Kharasch, Esq.
John Morris, Esq.
John J. Kane, Esq.

Exhibit A



K&L GATES

December 23, 2020

A. Lee Hogewood, III
Lee.hogewood@klgates.com

T: 1-919-743-7306

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Dear Counsel:

I am writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. ("HCMFA") and NexPoint Advisors, L.P. ("NexPoint", and together with HCMFA, the "Advisors"), and Highland Income Fund, NexPoint Strategic Opportunities Fund, and NexPoint Capital, Inc. (together, the "Funds"). CLO Holdco, Ltd. ("CLO Holdco") whose counsel is copied below, joins in this notice and request.

As you are aware, certain registered investment companies and a business development company managed by either NexPoint or HCMFA own preference shares in many of the CLOs. In the following cases those companies own a majority of such shares¹:

- Stratford CLO, Ltd. 69.05%
- Grayson CLO, Ltd. 60.47%
- Greenbriar CLO, Ltd. 53.44%

¹ These ownership percentages are derived from information provided by the Debtor. If the Debtor contends that the ownership percentages are inaccurate, please inform us of the Debtor's differing calculations.

In other cases, such companies in combination with CLO Holdco hold, a super-majority, or a majority of the preference shares in the following CLOs:

- Liberty CLO, Ltd. 70.43%
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- Rockwall CDO, Ltd. 55.75%
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Additionally, such companies own significant minority stakes in the following CLO's:

- Eastland CLO, Ltd. 41.69%
- Red River CLO, Ltd. 33.33%

The ownerships described above represent in many cases the total remaining outstanding interests in such CLOs, because the noteholders have been paid in full. In others, the remaining noteholders represent only a small percentage of remaining interests. Thus, the economic ownership of the registered investment companies, business development company, and CLO Holdco largely represent the investors in the CLOs identified above.

In pleadings filed with the Bankruptcy Court, you asserted that one or more of the entities identified above lacked the authority to seek a replacement of the Debtor as fund manager because of the alleged affiliate status of the beneficial owners of such entities. We disagree.

Consequently, in addition to our request of yesterday, where appropriate and consistent with the underlying contractual provisions, one or more of the entities above intend to notify the relevant trustees and/or issuers that the process of removing the Debtor as fund manager should be initiated, subject to and with due deference for the applicable provisions of the United States Bankruptcy Code, including the automatic stay of Section 362. The basis for initiating the process for such removal includes, but is not limited to, the fact that HCMLP's duties, as set forth in the portfolio management agreements of the CLOs, are subject to the requirements of the Investment Advisers Act of 1940 ("Advisers Act"). HCMLP appears to be acting contrary to those duties under the agreements and where HCMLP is not fulfilling its duties under the portfolio management agreement it is therefore violating the Advisers Act. Thus, because HCMLP is (i) terminating employees on January 31, 2021, which will result in a loss of the employees that have traditionally serviced, including key investment professionals identified in the transactional documents for those CLOs (generally Mark Okada and Jim Dondero); (ii) ignoring the requests of the Advisors, Funds, and CLO Holdco, which together account for all or a majority of interests in certain CLOs, and selling assets of those CLOs prior to plan confirmation; (iii)

² CLO's marked with an asterisk (*) appear in the foregoing list as well.

December 23, 2020

Page 3

adding a replacement manager as subadviser prior to January 31, 2021; and (iv) for other cause, the Advisors, Funds, and CLO Holdco have concluded that they have no choice but to initiate HCMLP's removal as fund manager where such entities are contractually and legally permitted or obligated to do so.

Because the process of removal is being initiated, subject to the applicable provisions of the Bankruptcy Code, we respectfully request that no further CLO transactions occur at least until the issues raised by and addressed in the Debtor's plan are resolved at the confirmation hearing. To the extent there are CLO transactions prior to the confirmation, we intend to fully explore the business justification for doing so, as we do not believe there is any rational business reason to liquidate securities prior to that time.

Sincerely,

A. Lee Hogewood, III

A. Lee Hogewood, III

Exhibit B




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

ENTERED

THE DATE OF ENTRY IS ON
THE COURT'S DOCKET

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

Signed January 9, 2020


United States Bankruptcy Judge

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

In re:

HIGHLAND CAPITAL MANAGEMENT, L.P.,¹

Debtor.

§
§
§
§
§
§

Chapter 11

Case No. 19-34054-sgj11

Related to Docket Nos. 7 & 259

**ORDER APPROVING SETTLEMENT WITH OFFICIAL COMMITTEE OF
UNSECURED CREDITORS REGARDING GOVERNANCE OF THE DEBTOR
AND PROCEDURES FOR OPERATIONS IN THE ORDINARY COURSE**

Upon the *Motion of the Debtor to Approve Settlement with Official Committee of Unsecured Creditors Regarding Governance of the Debtor and Procedures for Operations in the Ordinary Course* (the “Motion”),² filed by the above-captioned debtor and debtor in possession

¹ The Debtor’s last four digits of its taxpayer identification number are (6725). The headquarters and service address for the above-captioned Debtor is 300 Crescent Court, Suite 700, Dallas, TX 75201.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.



(the “Debtor”); the Court having reviewed the Motion, and finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), and (c) notice of this Motion having been sufficient under the circumstances and no other or further notice is required; and having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and having determined that the relief sought in the Motion is in the best interests of the Debtor and its estate; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on the terms and conditions set forth herein, and the United States Trustee’s objection to the Motion is OVERRULED.

2. The Term Sheet is approved and the Debtor is authorized to take such steps as may be necessary to effectuate the settlement contained in the Term Sheet, including, but not limited to: (i) implementing the Document Production Protocol; and (ii) implementing the Protocols.

3. The Debtor is authorized (A) to compensate the Independent Directors for their services by paying each Independent Director a monthly retainer of (i) \$60,000 for each of the first three months, (ii) \$50,000 for each of the next three months, and (iii) \$30,000 for each of the following six months, provided that the parties will re-visit the director compensation after the sixth month and (B) to reimburse each Independent Director for all reasonable travel or other expenses, including expenses of counsel, incurred by such Independent Director in connection with its service as an Independent Director in accordance with the Debtor’s expense reimbursement policy as in effect from time to time.

4. The Debtor is authorized to guarantee Strand's obligations to indemnify each Independent Director pursuant to the terms of the Indemnification Agreements entered into by Strand with each Independent Director on the date hereof.

5. The Debtor is authorized to purchase an insurance policy to cover the Independent Directors.

6. All of the rights and obligations of the Debtor referred to in paragraphs 3 and 4 hereof shall be afforded administrative expense priority under 11 U.S.C. § 503(b).

7. Subject to the Protocols and the Term Sheet, the Debtor is authorized to continue operations in the ordinary course of its business.

8. Pursuant to the Term Sheet, Mr. James Dondero will remain as an employee of the Debtor, including maintaining his title as portfolio manager for all funds and investment vehicles for which he currently holds that title; provided, however, that Mr. Dondero's responsibilities in such capacities shall in all cases be as determined by the Independent Directors and Mr. Dondero shall receive no compensation for serving in such capacities. Mr. Dondero's role as an employee of the Debtor will be subject at all times to the supervision, direction and authority of the Independent Directors. In the event the Independent Directors determine for any reason that the Debtor shall no longer retain Mr. Dondero as an employee, Mr. Dondero shall resign immediately upon such determination.

9. Mr. Dondero shall not cause any Related Entity to terminate any agreements with the Debtor.

10. No entity may commence or pursue a claim or cause of action of any kind against any Independent Director, any Independent Director's agents, or any Independent

Director's advisors relating in any way to the Independent Director's role as an independent director of Strand without the Court (i) first determining after notice that such claim or cause of action represents a colorable claim of willful misconduct or gross negligence against Independent Director, any Independent Director's agents, or any Independent Director's advisors and (ii) specifically authorizing such entity to bring such claim. The Court will have sole jurisdiction to adjudicate any such claim for which approval of the Court to commence or pursue has been granted.

11. Nothing in the Protocols, the Term Sheet or this Order shall affect or impair Jefferies LLC's rights under its Prime Brokerage Customer Agreements with the Debtor and non-debtor Highland Select Equity Master Fund, L.P., or any of their affiliates, including, but not limited to, Jefferies LLC's rights of termination, liquidation and netting in accordance with the terms of the Prime Brokerage Customer Agreements or, to the extent applicable, under the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code. The Debtor shall not conduct any transactions or cause any transactions to be conducted in or relating to the Jefferies LLC accounts without the express consent and cooperation of Jefferies LLC or, in the event that Jefferies withholds consent, as otherwise ordered by the Court. For the avoidance of doubt, Jefferies LLC shall not be deemed to have waived any rights under the Prime Brokerage Customer Agreements or, to the extent applicable, the Bankruptcy Code's "safe harbor" protections, including under sections 555 and 561 of the Bankruptcy Code, and shall be entitled to take all actions authorized therein without further order of the Court

12. Notwithstanding any stay under applicable Bankruptcy Rules, this Order shall be effective immediately upon entry.

13. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order, including matters related to the Committee's approval rights over the appointment and removal of the Independent Directors.

END OF ORDER

EXHIBIT 8

Subject: Highland -- Letters to and From K&L Gates

On 12/24/20, 2:39 PM, "Jeff Pomerantz" <jpomerantz@pszjlaw.com> wrote:

Michael --

At the hearing on 12-16 we clearly established to Judge Jernigan's satisfaction, through Dustin Norris, K&L Gates' witness, that Jim Dondero makes the material investment decisions for all the entities that filed the Motion and whom K&L Gates represents. Accordingly we do believe these issues directly implicate your client, the January 9, 2020 order which is being violated by any efforts to terminate the Debtor and the Temporary Restraining Order that the Court recently entered.

Best,
Jeff

On 12/24/20, 2:33 PM, "Michael Lynn" <dmljng@gmail.com> wrote:

Thank you for providing these. I had not seen them and have had no contact with K&L Gates (though Bryan Assink did regarding certain claims). I do not have familiarity with the Investors Act but do not agree with some of the statements in your letters; as I am not involved, however, that is a matter for you and K&L Gates.

I have not reviewed the transcript of the December 16 hearing, so I do not know on what evidence Judge Jernigan based her conclusion that my client engineered the motion then heard. While there are relationships between my client and some of the movants, I believe they are separate entities and should be treated as such.

Sent from my BlackBerry 10 smartphone.

Original Message

From: Jeff Pomerantz

Sent: Thursday, December 24, 2020 4:02 PM

To: Michael Lynn

Cc: Jeff Pomerantz

Subject: Highland -- Letters to and From K&L Gates

Michael –

Attached are two letters we received from K&L Gates and the Debtor's response that I believe will be of interest to you and your client.

Best.
Jeff

Jeff Pomerantz

Pachulski Stang Ziehl & Jones LLP

Tel: 310.277.6910 | Cell: 310.489.0285 | Fax: 310.201.0760

jpomerantz@pszjlaw.com<mailto:jpomerantz@pszjlaw.com>

vCard<<https://protect-us.mimecast.com/s/-vgkCgJkNJSqKjJBUNZCNI>> | Bio<<https://protect-us.mimecast.com/s/7RXvCjRnNRfYDw0OSRnrDr>> | LinkedIn<<https://protect-us.mimecast.com/s/CPy9CkRoNRfkARvwfQn6yG>>

Los Angeles | San Francisco | Wilmington, DE | New York

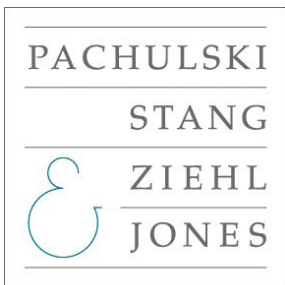
CONFIDENTIALITY

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Notwithstanding the Uniform Electronic Transactions Act or the applicability of any other law of similar substance and effect, absent an express statement to the contrary hereinabove, this e-mail message, its contents, and any attachments hereto are not intended to represent an offer or acceptance to enter into a contract and are not otherwise intended to bind the sender, Pachulski Stang Ziehl & Jones LLP, any of its clients, or any other person or entity.

EXHIBIT 9



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WEB: www.pszjlaw.com

Jeffrey N. Pomerantz

December 23, 2020

310.772.2336
jpomerantz@pszjlaw.com

Via E-mail

D. Michael Lynn
Bonds Ellis Eppich Schafer Jones
LLP
420 Throckmorton Street
Suite 1000
Fort Worth, Texas 76102

**Re: Termination of James Dondero Access to Office
and Services**

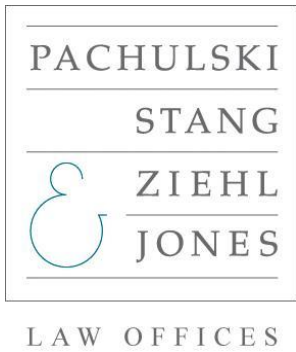
Dear Judge Lynn:

As you know, on December 10, 2020, a temporary restraining order was entered against Mr. James Dondero by the Bankruptcy Court for the Northern District of Texas, Dallas Division (the “TRO”). Case No. 20-03190-sgj, Docket No. 10 (Bankr. N.D. Tex. Dec. 10, 2020).

Pursuant to the TRO, Mr. Dondero was, among others things, prohibited from communicating with the employees of Highland Capital Management, L.P. (the “Debtor”) (subject to certain limited exceptions) and interfering with or otherwise impeding, directly or indirectly, the Debtor’s business. We have discussed with you several instances in which Mr. Dondero breached the terms of the TRO and will not repeat them here.

As you also know, the Debtor manages certain collateralized loan obligations (the “CLOs”). The Debtor sought to cause the CLOs to sell certain publicly-traded equity securities, including AVYA and SKY (tickers), prior to Thanksgiving. Mr. Dondero blocked these trades. That conduct, among other things, caused the TRO to be entered.

These trades were also the subject to the *Motion for Order Imposing Temporary Restrictions on Debtor’s Ability, as Portfolio Manager,*



December 23, 2020
Page 2

to Initiate Sales by Non-Debtor CLO Vehicles [D.I. 1528] (the “CLO Motion”), which was filed by, among others, NexPoint Advisors, L.P. (“NPA”) and Highland Capital Management Fund Advisors, L.P. (“HCMFA”). At the hearing on December 16, 2020, Judge Jernigan stated both that she agreed that the CLO Motion was brought by “Mr. Dondero, through different entities” and that it was frivolous.

On December 22, 2020, employees of NPA and HCMFA notified the Debtor that they would not settle the CLOs’ sale of the AVYA and SKY securities. To justify their conduct, those employees mimicked the frivolous arguments made in the CLO Motion. This conduct violated the TRO, and HCMLP reserves all rights to seek appropriate sanctions with respect to such violation.

As a result of this conduct, among other things, HCMLP has concluded that Mr. Dondero’s presence at the HCMLP office suite and his access to all telephonic and information services provided by HCMLP are too disruptive to HCMLP’s continued management of its bankruptcy case to continue.

As a consequence, Mr. Dondero’s access to the offices located at 200/300 Crescent Court, Suite 700, Dallas, Texas 75201 (the “Office”), will be revoked effective Wednesday, December 30, 2020 (the “Termination Date”). As of the Termination Date, Mr. Dondero’s key card will be de-activated and building staff will be informed that Mr. Dondero will no longer have access to the Office.

Further, as of the Termination Date, Mr. Dondero’s access to his @highlandcapital.com email account will be revoked, and Mr. Dondero will no longer have access to that email account or any emails, calendars, or contacts associated with that email account.

In addition, Mr. Dondero’s access to the HCMLP system and all services maintained on that system, including his Bloomberg terminal, will be revoked as of the Termination Date.

HCMLP will also terminate Mr. Dondero’s cell phone plan and those cell phone plans associated with parties providing personal services to Mr. Dondero (collectively, the “Cell Phones”). HCMLP demands that Mr. Dondero immediately turn over the Cell Phones to HCMLP by delivering them to you; we can make arrangements to recover the phones from you at a later date. The Cell Phones and



December 23, 2020
Page 3

the accounts are property of HCMLP. HCMLP further demands that Mr. Dondero refrain from deleting or “wiping” any information or messages on the Cell Phone. HCMLP, as the owner of the account and the Cell Phones, intends to recover all information related to the Cell Phones and the accounts and reserves the right to use the business-related information.

Any attempt by Mr. Dondero to enter the Office, regardless of whether he is entering on his own or as a guest, will be viewed as an act of trespass. Similarly, any attempts by Mr. Dondero to access his @highlandcapital.com email account or any other service previously provided to Mr. Dondero by HCMLP will be viewed as an act of trespass, theft, and/or an attempted breach of HCMLP’s security protocols.

Finally, HCMLP demands that Mr. Dondero take all steps necessary to retain and protect from loss, destruction, alteration or defacement all documents, communications, and information relating to the Debtor, the Debtor’s assets, any assets managed by the Debtor, or the Debtor’s employees.

HCMLP reserves all rights that it may have whether at law, equity, or in contract, including the right to restrict the access of HCMFA and NPA employees to the Office and HCMLP-provided services. Nothing herein will be construed as a waiver of any such rights.

Sincerely,

A handwritten signature in blue ink that reads "J. Pomerantz/guj".

Jeffrey N. Pomerantz

cc: Ira Kharasch, Esq.
John Morris, Esq.
Gregory Demo, Esq.

EXHIBIT 10



K&L GATES

R. Charles Miller
202.778.9372
chuck.miller@klgates.com

December 31, 2020

Jeffrey N. Pomerantz
Ira D. Kharasch
John A. Morris
Gregory V. Demo
Hayley R. Winograd
Pachulski Stang Ziehl & Jones, LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

Re: Termination of Dondero access to office and services

Dear Counsel:

We are writing to you on behalf of our clients Highland Capital Management Fund Advisors, L.P. (“HCMFA”) and NexPoint Advisors, L.P. (“NexPoint”, and together with HCMFA, the “Advisors”), and Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc. and the other retail funds advised by the Advisors (together, the “Funds”).

We have been provided a copy of your December 23, 2020 letter to Mr. Lynn regarding the termination of Mr. Dondero’s access to the office and services. We are extremely concerned that the loss of such access by Mr. Dondero could have serious effects for our clients and do unintended damage to their interests. In particular, the Funds, many of which are publicly-listed, registered with and regulated by the Securities and Exchange Commission, and have thousands of shareholders, may be economically disadvantaged to the extent that the Debtor’s actions deny Mr. Dondero the access and ability to provide the necessary and contractual services to them.

Mr. Dondero is portfolio manager and/or officer of various entities which occupy space in the premises and have shared access to email accounts, computers and other relevant material pursuant to the terms of various shared services agreements (the “Agreements”), which the Debtor has not rejected and for which such entities pay the Debtor significant fees. We are not aware of any provisions under the Agreements which give the Debtor the power to determine which employees of NexPoint Advisors,

December 30, 2020

Page 2

L.P. and other entities may enter the premises or have access to the email and related systems. If there are, please direct us to those provisions. The Debtor has given written notice to the Advisors and the Funds that the Agreements will remain in place until January 31, 2021, at which time they will terminate, and our clients have been and are acting in reliance on those written representations from the Debtor.

Mr. Dondero is the lead (and in some cases the sole) portfolio manager for certain of the Funds. He is intimately involved in the day-to-day operations and investment decisions regarding those Funds and in the operations of the Advisors. We believe that denying Mr. Dondero access to the premises, email and related systems will materially and adversely affect the function and reputation of the Advisors and the Funds. We ask that the Debtor reconsider its position refusing Mr. Dondero necessary access to the email, operating systems and building required to serve the Funds and the Advisors.

Sincerely,

/s R. Charles Miller

R. Charles Miller

Cc:

D. Michael Lynn (via email)

EXHIBIT 11



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DELAWARE 19899-8705

TELEPHONE: 302/652 4100
FACSIMILE: 302/652 4400

WEB: www.pszjlaw.com

Gregory Demo

January 4, 2021

212-561-7700
gdemo@pszjlaw.com

Via E-mail

James A. Wright III
K&L Gates LLP
State Street Financial Center
One Lincoln Street
Boston, Massachusetts 02111

A. Lee Hogewood III
K&L Gates LLP
4350 Lassiter at North Hills Ave.
Suite 300
Raleigh, North Carolina 27609

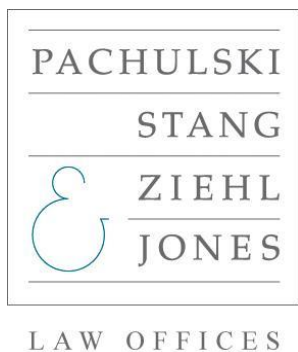
R. Charles Miller
K&L Gates LLP
1601 K Street, NW
Washington DC 200006

Re: In re Highland Capital Management, L.P., Case No. 19-34054-sgj (Bankr. N.D. Tex): Termination of James Dondero

Dear Counsel:

As you know, we represent Highland Capital Management, L.P. (the "Debtor"), the debtor-in-possession in the above-captioned bankruptcy case. We understand that your firm represents the following entities: Highland Capital Management Fund Advisors, L.P., NexPoint Advisors, L.P., Highland Income Fund, NexPoint Strategic Opportunities Fund, NexPoint Capital, Inc., and certain other unnamed funds managed by Highland Capital Management Fund Advisors, L.P. or NexPoint Advisors, L.P. (collectively, the "Entities").

We write in response to your letter dated December 31, 2020, in which you contend that James Dondero's removal from the



James A. Wright III
A. Lee Hogewood III
R. Charles Miller
January 4, 2021
Page 2

Debtor's office, the Debtor's email service, and certain other services provided by the Debtor could have adverse effects on the Entities and in which you ask the Debtor to reconsider its removal of Mr. Dondero from the Debtor's property.

Your contentions demonstrate a continued fealty to Mr. Dondero that conspicuously ignores the facts. The record clearly establishes that Mr. Dondero has interfered with the Debtor's business, engaged in disruptive behavior, and has interests adverse to the Debtor and its estate. Regrettably, Mr. Dondero has continued down his chosen path despite the imposition of a temporary restraining order against him. Consequently, the Debtor was left with no alternative other than to remove Mr. Dondero from the Debtor's offices and cease providing services to him.

We note that Mr. Dondero did not seek judicial relief, make any of the contentions you have made, or even complain to the Debtor. We also note that (a) no action was taken against the Entities, only against Mr. Dondero, (b) Mr. Dondero was given reasonable notice of his eviction and the termination of the Debtor's services to him, such that he could have and should have made alternative arrangements to avoid any disruption, and (c) nothing prevents Mr. Dondero from continuing to work on behalf of the Entities (as you are likely aware, a substantial portion of the U.S. workforce has worked remotely for almost a year now).

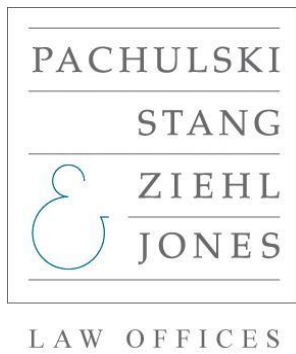
If the Entities believe they have claims against the Debtor for the eviction of Mr. Dondero, they can pursue them, and the Debtor will respond as necessary to protect itself and its estate, including seeking sanctions for the filing of frivolous lawsuits.

The Debtor reserves all rights it may have at law or in equity, including the right to seek reimbursement of legal fees and expenses incurred in seeking sanctions.

Please feel free to contact me with any questions.

Sincerely,

Gregory Demo



James A. Wright III
A. Lee Hogewood III
R. Charles Miller
January 4, 2021
Page 3

Attachment

cc: Jeffrey Pomerantz, Esq.
Ira Kharasch, Esq.
John Morris, Esq.
D. Michael Lynn, Esq.
DC Sauter, Esq.