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

In Re: ) **Case No. 19-34054-sgj-11**  
) Chapter 11  
)  
HIGHLAND CAPITAL ) Dallas, Texas  
MANAGEMENT, L.P., ) December 10, 2020  
) 9:30 a.m. Docket  
Debtor. )

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HIGHLAND CAPITAL ) **Adversary Proceeding 20-3190-sgj**  
MANAGEMENT, L.P., )  
)  
Plaintiff, ) - MOTION FOR PRELIMINARY  
) INJUNCTION  
v. ) - MOTION FOR TEMPORARY  
JAMES D. DONDERO, ) RESTRAINING ORDER  
)  
Defendant. )

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

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1                   DALLAS, TEXAS - DECEMBER 10, 2020 - 9:58 A.M.

2                   THE COURT: We only have left today the Highland  
3 matter. There may be people on the line for the RE Palm  
4 Springs matter, but if you're on the line for that, the Court  
5 granted a motion for continuance that was filed by SR  
6 Construction, Inc. a few days ago. So if you were on the line  
7 for that, that's been continued at the Movant's request. Or  
8 the Objector's request, I should say. And it's to be reset at  
9 such point in time as the lawyers seek that.

10                  All right. So, with that, I am going to turn to Highland  
11 and our emergency motion for a temporary restraining order  
12 against James Dondero that was filed by the Debtor. First,  
13 for the Debtor team, who do we have appearing?

14                  MR. POMERANTZ: Good morning, Your Honor. It's Jeff  
15 Pomerantz, also with John Morris. John Morris will be handling the  
16 hearing today on behalf of the Debtor.

17                  THE COURT: All right. Thank you. For Mr. Dondero, who  
18 do we have appearing?

19                  MR. BONDS: Your Honor, John Bonds and Michael Lynn.

20                  THE COURT: All right. Thank you. The Committee, I know,  
21 is interested in this. Who do we have appearing for the Committee?

22                  MR. CLEMENTE: Good morning, Your Honor. Matthew  
23 Clemente; Sidley Austin; on behalf of the Committee.

24                  THE COURT: All right. I'm going to ask, do we have  
25 anyone appearing for certain parties who filed another emergency

1 motion yesterday, I think involving what seemed like very  
2 overlapping issues. The parties that I'm talking about are Highland  
3 Fixed Income Fund; NexPoint Advisors, LP; NexPoint Capital, Inc.;  
4 and NexPoint Strategic Opportunities Fund. Do we have anyone -- I  
5 think it was the K&L Gates firm who filed an emergency motion  
6 yesterday on, like I said, what I think are some overlapping issues  
7 with what we're going to hear about today. Anyone here on the line  
8 for those entities?

9 MR. WRIGHT: Yes. Good morning, Your Honor. It's James  
10 Wright, K&L Gates. I wasn't expecting this matter to be on today,  
11 so I need to apologize for not having a coat and a tie.

12 THE COURT: Okay. Well, I realize I picked you out. But  
13 could you, for the court reporter, say your last name again? It was  
14 a little garbley.

15 MR. WRIGHT: Yes. It's James Wright, W-R-I-G-H-T.

16 THE COURT: Okay. Thank you. Well, we have a lot of  
17 other folks on the line, so I'll just ask: Is there anyone else out  
18 there who desires to appear? This was obviously set very expedited,  
19 so maybe people did not file a pleading to weigh in, but maybe  
20 they're wanting to appear. If so, go ahead. (No response.) All  
21 right. Hearing no others, I will go to you, I guess, Mr. --

22 MR. BAIN: Your Honor?

23 THE COURT: Oh, go ahead.

24 MR. BAIN: Your Honor?

25 THE COURT: Yes?

1           MR. BAIN: I'm sorry. I was on mute. This is Joseph Bain  
2 of the law firm of Jones Walker. I represent the CLOs. And Your  
3 Honor, at the appropriate time, if Your Honor doesn't mind, I have a  
4 few comments that may help inform the Court on kind of what's going  
5 on. But I'm happy to wait until the appropriate time.

6           THE COURT: Okay. Very good. Well, and the reason why I  
7 picked out Mr. Wright regarding that newest emergency motion is, you  
8 know, I know they've asked for an emergency setting next Tuesday,  
9 and I have not -- I've not made a decision on that. I kind of  
10 wanted to see what I hear about today and figure out if there's  
11 really, you know, a need for that or not.

12           So, thank you, Mr. Bain. We'll talk to you at some point  
13 today.

14           MR. BAIN: Thank you, Your Honor.

15           THE COURT: Any other appearances?

16           All right. Well, I was about to go back to or go to Mr.  
17 Morris. But let me ask Mr. Bonds or Mr. Lynn: Did you file a  
18 responsive pleading? When I left here yesterday afternoon, I  
19 did not see one. But was there one filed late at night, by  
20 chance, that I just haven't seen?

21           MR. BONDS: No, Your Honor, we have not.

22           THE COURT: Okay. Thank you.

23           MR. BONDS: (garbled)

24           THE COURT: All right. Mr. Morris, go ahead.

25           MR. MORRIS: Thank you, Your Honor. John Morris;

1 Pachulski, Stang, Ziehl & Jones; for the Debtor.

2 Let me begin by thanking Your Honor for hearing us on such  
3 shortened notice. What I thought I'd do is spend a few  
4 minutes, Your Honor, talking about why we're here, summarizing  
5 the facts, and then summarizing for the Court the relief that  
6 we're seeking.

7 As Your Honor, I presume, is aware, we filed this motion  
8 on Monday, together with a declaration from Jim Seery, the  
9 Debtor's CEO and CRO, with 29 separate exhibits. And if it  
10 pleases the Court, I'd like to proceed in that manner.

11 THE COURT: All right. You may.

12 MR. MORRIS: Okay. Your Honor, we do regret that  
13 we're here, frankly. The Debtor has worked very hard during  
14 the course of this case to get to where we are. We have a  
15 plan on file that calls for the monetization of the Debtor's  
16 assets for distribution to holders of allowed claims, we have  
17 an approved disclosure statement, and confirmation is just  
18 five weeks away.

19 Unfortunately, in the last couple of weeks, Mr. Dondero  
20 has engaged in what we firmly believe is wrongful conduct and  
21 can't really be credibly disputed or justified. As Mr. Seery  
22 lays out in his declaration and as Mr. Dondero's own written  
23 words show, Mr. Dondero recently interfered with the Debtor's  
24 operations and decisions and made some rather explicit  
25 threats.

1           We're not here to punish Mr. Dondero. We're not here  
2 seeking sanctions for violation of the automatic stay.  
3 Rather, we're here to simply set some very clear and firm  
4 ground rules on a go-forward basis so the Debtor can get  
5 across the finish line without interference or coercion by Mr.  
6 Dondero or anyone acting on his behalf. That's all we're here  
7 to do today.

8           We tried to work with Mr. Dondero's counsel on a  
9 stipulation, but regrettably were unable to do so.

10          So let me describe for the Court the facts that support  
11 the motion, and at the end of that I will offer our exhibits  
12 into evidence.

13          I do want to provide some context into how we got here.  
14 The facts are pretty simple. As Your Honor will recall, back  
15 in January, with this Court's approval, Mr. Dondero  
16 surrendered control of the Debtor to an independent board of  
17 directors, including Mr. Seery. As Your Honor knows, though,  
18 Mr. Dondero was retained as a portfolio manager and as an  
19 unpaid employee of the Debtor.

20          Pursuant to the Court's order and the term sheet entered  
21 into with the Unsecured Creditors' Committee, Mr. Dondero's  
22 responsibilities were to be determined by the board, and he  
23 agreed to resign at the board's request.

24          Over the summer, as Your Honor will recall, Mr. Seery was  
25 appointed the Debtor's CEO and CRO. Throughout this time, Mr.



1 Seery worked closely with Mr. Dondero. And one of the things  
2 they worked on was trying to come up with a so-called pot  
3 plan, the goal of which was to come to a consensual resolution  
4 of this case. Mr. Seery's goal, the (garbled) goal, the  
5 Debtor's goal, was to try to give the estate an alternative to  
6 the monetization of the Debtor's assets, and Mr. Seery worked  
7 hard and in good faith in that regard.

8 As Your Honor will also recall, in late summer the Debtor  
9 and certain litigation creditors agreed to mediate these  
10 disputes. In September, the Debtor announced that it had  
11 reached an agreement with Josh Terry and Acis to resolve their  
12 claims. I don't need to remind the Court of the nature of the  
13 disputes between Mr. Dondero and Mr. Terry, but suffice it to  
14 say that Mr. Dondero made clear that he opposed not only the  
15 settlement that was reached at the mediation, but, really, any  
16 settlement at all with Mr. Terry.

17 At around the same time, while still trying to get to the  
18 pot plan and a consensual resolution, the Debtor did present  
19 its plan of reorganization that provides for the monetization  
20 of the assets for the benefit of creditors. By the end of  
21 September, Mr. Dondero made it clear that he would oppose both  
22 the Acis settlement and the Debtor's plan.

23 He has every right to do that, Your Honor. Well, those  
24 steps are contrary to the interests of the Debtor. In  
25 addition, it also became clear that Mr. Dondero, through

1 (garbled) trust, has continued to press his claims that the  
2 Debtor had -- that the Debtor had mismanaged Multi-Strat  
3 during the case.

4 For these reasons, I think on October 2nd the board asked  
5 Mr. Dondero to resign, and he did so on October 9th.

6 With confirmation on the horizon, in the last couple of  
7 weeks, regrettably, Mr. Dondero has, in fact, interfered with  
8 the Debtor's business. There's no dispute that the Debtor  
9 serves as the manager of certain CLOs. There's no dispute  
10 that Mr. Dondero and certain of his affiliates hold a portion  
11 of the preferred notes in the CLOs managed by the Debtors. I  
12 don't think there's any dispute that the Debtor's duty is to  
13 the CLOs and not to any particular holder of CLO interests.

14 In late November, in furtherance of his duties, Mr. Seery  
15 directed that certain assets held by the CLOs be sold. Mr.  
16 Dondero and certain entities he controls, the ones that we  
17 mentioned earlier, Your Honor, the ones that are the  
18 (garbled), apparently disagreed with Mr. Seery's business  
19 judgment, and that happens.

20 I do want to point out, I don't know if Your Honor has had  
21 a chance to read the competing TRO, --

22 THE COURT: I have.

23 MR. MORRIS: -- but what's notable -- okay. What's  
24 notable in there, Your Honor, is that they expressly admit,  
25 and I'm quoting, the Debtor is responsible for making

1 decisions to sell the CLOs' assets. They admit that in their  
2 request for a TRO.

3 So there's no dispute that Mr. Seery has the right to do  
4 what he set out to do. Nevertheless, Mr. Dondero intervened  
5 and personally stopped the trades that Mr. Seery authorized.  
6 It's in writing. It can't be disputed. In fact, it's set  
7 forth in Exhibit 8, which is attached to Mr. Seery's  
8 declaration, which can be found at Docket 4 to the adversary  
9 proceeding.

10 Not only did Mr. Dondero cause the trades to halt, he told  
11 certain people, including the Debtor's chief compliance  
12 officer, not to do it again, and (inaudible) that they would  
13 face personal liability if they did so.

14 The Debtor sent cease-and-desist letters to Mr. Dondero  
15 and his affiliated entities. Those letters are attached as  
16 Exhibits 9 and 10 to Mr. Seery's declaration. And the fact  
17 is, Your Honor, for this particular part of the episode, Mr.  
18 Seery's conduct is simply unacceptable and was one of the  
19 events that precipitated the filing of this motion.

20 THE COURT: You said Mr. Seery. I think you meant  
21 Mr. Dondero.

22 MR. MORRIS: I apologize, Your Honor. I certainly  
23 did, yes.

24 THE COURT: Okay.

25 MR. MORRIS: The other event that caused the Debtor

1 to file this motion was a rather explicit written threat that  
2 Mr. Dondero made to Mr. Seery promptly after the Debtor acted  
3 to fulfill its fiduciary duties to the estate.

4 As the Court may generally be aware, Mr. Dondero and  
5 certain of his affiliates are the makers under a series of  
6 promissory notes in favor of the Debtor. The notes are  
7 attached as Exhibits 11 through 23 to Mr. Seery's declaration.  
8 Certain of these notes are demand notes, meaning that they  
9 don't have a term, they don't expire at some defined point in  
10 the future, they're payable upon demand by the holder. The  
11 Debtor is the holder of these notes.

12 Last week, the Debtor exercised its right to make a demand  
13 for payment of all unpaid principal and accrued interest,  
14 estimated to be approximately \$30 million in the aggregate.  
15 Those demands are set forth in Exhibits 24 through 27 in Mr.  
16 Seery's declaration.

17 The demand notes are property of the Debtor's estate,  
18 collection of the notes is part of the Debtor's liquidity  
19 plan, and the proceeds are expected to be used to pay  
20 creditors' claims.

21 Shortly after the demand for payment on the notes was  
22 made, Mr. Seery [sic] sent a short text that can be found at  
23 Exhibit 28, saying simply, Be careful what you do. Last  
24 warning.

25 To Mr. Seery's surprise, Mr. Dondero called him the

1 following morning, ostensibly to talk about his pot plan. As  
2 laid out in his declaration, Mr. Seery expressed considerable  
3 concern over the threat, expressed his view that he thought it  
4 was unlawful, and was surprised, really, at the nature of the  
5 conversation.

6 Mr. Dondero didn't apologize during that call. He didn't  
7 express regret. Instead, he suggested that the lawyers would  
8 handle that issue. And only at the end of the call, when Mr.  
9 Seery pressed, did Mr. Dondero begrudgingly say that he didn't  
10 mean any physical harm.

11 Your Honor, we're five weeks away from confirmation. The  
12 Debtor is laser-focused on getting there. We are -- continue  
13 -- we have resolved substantial claims. We continue to  
14 resolve substantial claims. And though if there was a viable  
15 pot plan the Debtor would still pursue it, the Debtor is  
16 seeking a smooth transition into its post-bankruptcy state.  
17 We continue to negotiate with creditors who have outstanding  
18 claims. And we need peace. We need the freedom to get there.

19 As a result of the foregoing, the Debtor seeks the entry  
20 of a temporary restraining order in the form of Exhibit A  
21 attached to the motion, which is on Docket #2 in the adversary  
22 proceeding. In substance, the form is intended to prevent Mr.  
23 Dondero from interfering with the Debtor's business, engaging  
24 in threatening or coercive conduct, and using his affiliates  
25 or others acting on his behalf to do the same.

1           In our discussions with Mr. Dondero's counsel, it became  
2 clear that Mr. Dondero was not interested at this time in  
3 resolving the entirety of the dispute. We wanted to get this  
4 whole adversary proceeding open and closed and put this behind  
5 us. But regrettably, we're here today to press the motion  
6 because we were unable to come to that agreement.

7           So, in addition to the entry of the order attached to the  
8 motion, the Debtor also requests that the Court hold an  
9 evidentiary hearing on the Debtor's request for a preliminary  
10 injunction on January 4th, when we already have time on the  
11 Court's calendar.

12           And so that there's no misunderstanding, if the parties  
13 cannot resolve this matter beforehand, the Debtors do intend  
14 to take discovery during the intervening period. We will be  
15 prepared on January 4th, and we would expect, if forced to, to  
16 call Mr. Dondero as a witness at that hearing.

17           I have nothing further, Your Honor. Oh, actually, I do  
18 have something further. The Debtor moves for the entry into  
19 evidence of the declaration of Mr. James P. Seery, Jr.  
20 (muffled).

21           THE COURT: Okay. You got a little garbley. I think  
22 someone unmuted their device during your --

23           THE CLERK: Mr. Bonds --

24           THE COURT: Okay. But the request was that the Court  
25 admit into evidence the declaration of Mr. Seery at Docket

1 Entry #4, along with the 29 exhibits that were attached to  
2 that declaration. Any objection? (No response.) All right.  
3 Those will be admitted into evidence.

4 (Debtor's 29 exhibits are received into evidence.)

5 THE COURT: All right. Mr. Bonds, what does Mr.  
6 Dondero wish to tell the Court? All right. I think you put  
7 yourself back on mute when I made the comment. Please unmute  
8 your device.

9 MR. BONDS: I'm sorry, Your Honor. Can you hear me?

10 THE COURT: I can.

11 MR. BONDS: Your Honor, I would first like to  
12 apologize for Mr. Dondero's email to Mr. Seery. It should not  
13 have been sent. It is unfortunate that Mr. Dondero had  
14 several good points to make, but the message he was trying to  
15 send to the Debtor seems to have been lost, and for that I  
16 apologize.

17 Mr. Dondero had serious concerns about the way in which  
18 the Debtor's employees have been treated in this case. As the  
19 Court knows, the employees who built this company will be  
20 terminated either on December 31st or upon confirmation of the  
21 Debtor's most recent plan. Mr. Dondero does not agree to such  
22 termination or the financial treatment of the employees,  
23 especially the treatment over the last few months, in which  
24 they have seen their claims be substantially reduced.

25 Your Honor, Mr. Dondero is further concerned with the

1 Debtor's lack of sale of assets, especially the lack of  
2 competitive bidding. Mr. Dondero may want to bid on some of  
3 those assets, and under the Debtor's procedure, he is being  
4 precluded from bidding, even if the sale is outside of the  
5 ordinary course of business.

6 Mr. Dondero is further frustrated by the Debtor's sale of  
7 certain CLOs under applicable law. Is this an attempt around  
8 the hearing on the 16th? I don't know, Your Honor, but we are  
9 set for the 16th on the issue of whether or not the sales are  
10 being made outside the ordinary course of business. Is the  
11 Debtor trying to sell its assets without competitive business  
12 -- bidding? Why is that?

13 And what the Debtor would like you to sign is as an overly  
14 broad TRO written, I suspect, with a peppering of anger  
15 throughout. The relief requested is basically in the  
16 declaration of Jim Seery. It contains a number of acts which  
17 the Debtor seeks to have this Court determine are prohibited  
18 conduct. That term is defined in the Debtor's motion for TRO.  
19 We assert that such language is overly broad and its  
20 (inaudible) behavior which Debtor seeks to prohibit is not  
21 justified, inapplicable, or simply does not make common sense.

22 Your Honor, in the second paragraph of the proposed TRO,  
23 there are five general concepts that are listed as prohibited  
24 conduct. The first category of prohibited conduct which we  
25 have issues with relates to Mr. Dondero communicating with the



1 Debtor's employees except as it relates to the shared services  
2 provided by or controlled by Mr. Dondero. Such a prohibition  
3 is unreasonably broad and seemingly may well violate the First  
4 and the Fourth Amendments.

5 Your Honor, we ask the question: Can Mr. Dondero  
6 communicate something as basic as an employment contract with  
7 an employee who is going to be let go without violating the  
8 TRO?

9 The second category of prohibited conduct relates to  
10 allegedly interfering or otherwise impeding, directly or  
11 indirectly, the Debtor's business concerning its operations,  
12 management, treatment of claims, disposition of assets owned  
13 or controlled by the Debtor, and pursuit of the plan or any  
14 alternative to the plan. Your Honor, what does the word  
15 indirectly mean? Does such prohibition prohibit the Debtor  
16 from pursuing -- or Mr. Dondero from pursuing his Acis 9019  
17 motion or appeal? What does the language mean with regard to  
18 pursuit of the plan or any plan alternative? Has the Debtor  
19 turned the shield into a sword? Can the Debtor -- can Mr.  
20 Dondero try to sell his pot plan which he and the mediators  
21 have worked so diligently on? Does Mr. Dondero violate the  
22 terms of the TRO simply by voting against the plan?

23 Is this really what the Debtor wants, or does the Debtor  
24 want to return the most money that it can to the Debtor's  
25 creditors?

1           Can Mr. Dondero even (inaudible) in the organization  
2 without violating the TRO?

3           Finally, the proposed order provides that Mr. Dondero is  
4 further temporarily causing -- temporarily enjoined and  
5 restrained from causing, encouraging, or conspiring with (a)  
6 an entity owned or controlled by him and/or any person or any  
7 entity acting on his behalf from directly or indirectly  
8 engaging in any prohibited conduct. Again, what does the word  
9 causing mean? What about the word encouraging? Does that  
10 mean that the Debtor simply cannot do any action to protect  
11 himself -- Mr. Dondero cannot take any action to protect  
12 himself? Are we setting up Mr. Dondero to fail?

13           Your Honor, what we would ask, what we would ask the Court  
14 to do is either deny the TRO as being overly broad or order  
15 the Debtor to come up with some reasonable restrictions going  
16 forward. We are happy to consider anything reasonable, but  
17 the proposed TRO is anything but reasonable.

18           In summary, we ask the Court how the status quo would be  
19 altered by a TRO.

20           Your Honor, I think Mr. Morris has indicated that the  
21 Debtor intends to be able to confirm a plan on the 5th -- or  
22 the 12th, excuse me, of January. Your Honor, we don't believe  
23 that that's appropriate. Is Mr. Dondero prohibited from  
24 trying to get his plan confirmed? Is he -- I mean, it seems  
25 to me that he basically is.

1           Your Honor, with regard to two arguments made by Mr.  
2 Morris, or at least one, we deny that any demand notes  
3 precipitated Mr. Dondero's email. It had absolutely nothing  
4 to do with it. But we're not here to talk about Mr. Dondero's  
5 demand notes at this point.

6           I don't think I have anything further.

7           MR. MORRIS: If I may respond very briefly, Your  
8 Honor?

9           THE COURT: You may. Go ahead.

10          MR. MORRIS: Okay. Your Honor, we are cognizant, and  
11 we don't mean, with all due respect to Mr. Bonds, to infringe  
12 on any way Mr. Dondero's right to make applications to this  
13 Court, to file motions. I think I heard mention of, you know,  
14 questions as to whether Mr. Dondero could pursue his motion  
15 against Acis, his appeal of the Acis, about whether or not or  
16 he could file things in this Court. We expressly put in a  
17 footnote, in order to try to make it clear, that Mr. Dondero  
18 has and will continue to have a right to make any application  
19 he wants to this Court, to object to any motion that's made.  
20 That's not the point of the exercise. The point of the  
21 exercise is to protect the Debtor from interference -- to  
22 protect the Debtor (echoing) from interference, coercion, and  
23 from threats. It's really that simple. I don't know why  
24 words that we use in common language every day, such as  
25 causing or conspiring or encouraging, should be deemed to be

1 ambiguous. I think, given the importance of these issues, one  
2 ought to be able to stay on the right side of that line  
3 without questioning whether or not they're actually conspiring  
4 with somebody or encouraging somebody to do something that  
5 they're otherwise prohibited from doing.

6 What the Debtor will not tolerate, Your Honor, is play  
7 whack-the-mole, where we get an order against Mr. Dondero,  
8 only to have one of his affiliated entities or somebody acting  
9 on his behalf attempt to say, oh, no, I'm here acting on my  
10 own independent behalf, and they're going to do exactly what  
11 Mr. Dondero is prohibited from doing. So that's all.

12 Again, Your Honor, we're not here with hysteria. I don't  
13 think our papers were intended to nor did they project any  
14 hysteria. I think, with counsel, as provided for in the  
15 proposed order, we would be delighted to continue to work with  
16 Mr. Dondero constructively. If he's got ideas on his pot  
17 plan, we're not precluding him from doing that at all. All  
18 we're saying is that he's got to participate with counsel and  
19 that he's not going to make any further direct communications  
20 to the Debtor's officers, directors, or employees. That's  
21 all, Your Honor. We think it's really quite reasonable under  
22 the circumstances.

23 I have nothing further.

24 THE COURT: All right. Well, --

25 MR. BAIN: Your Honor?

1 THE COURT: Who just spoke up?

2 MR. BAIN: (garbled) Yes. Joseph Bain on behalf of  
3 the CLOs, if I may be heard.

4 THE COURT: Okay. Everybody else mute their line.  
5 Okay. Go ahead, Mr. Bain.

6 MR. BAIN: Yes, Your Honor. And can you hear me  
7 okay?

8 THE COURT: I can.

9 MR. BAIN: Wonderful. Your Honor, for the record,  
10 Joseph Bain of the law firm of Jones Walker on behalf of the  
11 CLOs.

12 Our role in this is obviously very sensitive, given the  
13 nature and relationships that exist. One of the things I did  
14 want to let Your Honor know, though, is that -- two things.  
15 One, one of the most outstanding issues, at least in my  
16 opinion, regarding confirmation of the plan is essentially  
17 what to do with the CLOs and collateral management agreements.  
18 That's still an open issue. If that's not resolved, there are  
19 significant rejection damages that could come from that. So  
20 that's the bad news.

21 The good news, however, is, up until this week, we've been  
22 negotiating with the Debtors and we have calls set for  
23 NexPoint -- with NexPoint to negotiate what all parties kind  
24 of refer to as a soft landing for the CLOs, which, to a large  
25 extent, involve the issues that are before you today.

1 I just, I just wanted to provide that context because the  
2 parties are talking and we are kind of taken aback by kind of  
3 the most recent event this week, because from an outsider's  
4 perspective, the current issues that are currently kind of at  
5 dispute here, we thought everyone was working towards a deal.  
6 And I think it is a little ironic that -- and as Your Honor  
7 knows, I was involved in the *Hoactzin* case, and I thought that  
8 that was a very -- I represented Mac Murray (phonetic) in that  
9 case, and I thought Ms. Byrnes and Mr. Hendricks did an  
10 excellent job of pulling all the parties together.

11 And Your Honor, I don't want to stray too far outside of  
12 my lane to suggest that that same approach is what is needed  
13 here, but I just want to raise for Your Honor to let you know  
14 that we are here. We're kind of the party stuck in the  
15 middle. And we're hoping and we're -- remain willing to  
16 negotiate all the outstanding issues. But obviously, given  
17 the nature of some of the allegations, it's more complicated  
18 right now.

19 THE COURT: Okay.

20 MR. BAIN: And that's all I have, Your Honor.

21 THE COURT: All right. Well, I appreciate you  
22 speaking up. And you may or may not remember that the Court  
23 ordered mediation last July, global mediation, including Mr.  
24 Dondero, mediation among the Debtor, Mr. Dondero, UBS, Acis,  
25 the Crusader Redeemer Committee, and we had a co-mediation

1 team. Retired Bankruptcy Judge Allan Gropper and former Weil  
2 Gotshal partner Sylvia Mayer. And while I don't communicate  
3 with mediators, I fully believe from the parties' reports that  
4 was mediation that the parties and lawyers tried very, very  
5 hard in to get to some settlements, and in fact, they did get  
6 to a settlement with Acis and the Redeemer Committee.

7 So, I have a heck of a lot of thoughts here, and I'll  
8 refrain from sharing every one of them, but I'm going to share  
9 a few of them. While I appreciate Mr. Bonds doing what was an  
10 honorable thing and apologizing on behalf of his client for  
11 the written communications that were worded in such a way  
12 where someone might think they were threatening or a violation  
13 of the stay, it wasn't an apology from Mr. Dondero directly.  
14 I think the really, really honorable thing might have been if  
15 Mr. Dondero came here, hat in hand, willing to go under oath  
16 and explain himself. You can share that with him, that's what  
17 this judge thinks, that the apology through counsel fell a  
18 little short, although I definitely appreciate counsel  
19 expressing the apology.

20 You know, I've been going back and forth looking at my  
21 computer screen today, and, you know, it's rather shocking to  
22 see in writing, you know, with the photo shot of a text where  
23 Dondero says, "Be careful what you do-last warning." I mean,  
24 that's just pretty shocking.

25 MR. BONDS: Your Honor? Your Honor?

1 THE COURT: Yes.

2 MR. BONDS: Can I have a second? Mr. Dondero did  
3 apologize to counsel and to Mr. Seery as well, and so the idea  
4 that Mr. Dondero has not apologized is not entirely correct.

5 THE COURT: Okay. Well, if I misunderstood, I  
6 apologize. But I guess what I was really trying to convey is,  
7 in a situation like this, I think coming into court and taking  
8 his lumps and saying things under oath might have been a  
9 better way to proceed.

10 I guess the second thing I want to say is I wish Mr.  
11 Dondero was here, because maybe I'm reading this wrong, but I  
12 think he needs to hear and know he is not in charge anymore of  
13 Highland. It may have been his baby. He may have created its  
14 wealth. But when he and the board made the decision to file  
15 Chapter 11, number one, that changed everything. And then  
16 number two, when the Committee was formed and was threatening  
17 "We think we need a Chapter 11 trustee because of conflicts of  
18 interest of Mr. Dondero and others," and when the Committee  
19 negotiated something short of that with the Debtor in January  
20 2020, you know, a settlement that involved Mr. Dondero no  
21 longer being in charge, no longer being CEO, no longer having  
22 any role except portfolio manager with the Debtor, and when  
23 various protocols were negotiated, heavily negotiated, for  
24 weeks, detailed, complex protocols, life changed even further.  
25 It changed when he filed Chapter 11, when he put his baby,



1 Highland, in Chapter 11, and then it changed further in  
2 January 2020 when this global corporate governance settlement  
3 was reached. As we know, it involved independent new board  
4 members coming in and eventually a new CEO. He's not in  
5 charge.

6 Now, that doesn't mean he's not a party in interest, and  
7 he can certainly weigh in with pleadings in the bankruptcy  
8 court. But these communications that I've admitted into  
9 evidence, and the declaration, the sworn declaration of Mr.  
10 Seery, suggest to me that he's not fully appreciating that,  
11 sorry, you're not in charge. And when you chose to put the  
12 company in bankruptcy because of the overwhelming debt, it  
13 started a cascade of events, so that now I'm depending on a  
14 debtor-in-possession with a new board and a new CEO and a  
15 Committee of very sophisticated members and professionals who  
16 are working in tandem with the Debtor to be in charge,  
17 basically. All right? So that's another thing I just feel  
18 compelled to say for Mr. Dondero's benefit.

19 I guess another thing is there was a little bit of a  
20 theme, Mr. Bonds, in your comments that Mr. Dondero is just  
21 concerned, more than anything else, about the way employees  
22 are being treated, or at least that's a major concern. And I  
23 don't find that to be especially compelling. I mean, maybe if  
24 he was sworn under oath and testified, I would believe that,  
25 but it doesn't feel like what's really going on here. Again,

1 he took the step of deciding that the company should file  
2 Chapter 11. We had the change in corporate governance in  
3 January. And he has the ability -- everyone, I think, would  
4 very much be interested in a plan that he supports. You know,  
5 he wants to get the company back. That has been made clear in  
6 hearings from time to time, and I believe, from Seery's  
7 declaration and Highland's lawyers, that they've been and will  
8 remain receptive to Mr. Dondero's ideas for a different type  
9 of plan that might allow him to get back into control of  
10 Highland, if he puts in adequate consideration that makes the  
11 Committee and others happy.

12 But we're in a proverbial the-train-is-leaving-the-station  
13 posture right now. Okay? We've got confirmation coming up  
14 the second week of January or something like that. Okay. So  
15 the train is leaving the station, so we're running out of time  
16 to hear what Dondero might want to do as far as an alternative  
17 plan.

18 So, as far as the requested TRO, I appreciate that Mr.  
19 Dondero and his counsel are worried about some ambiguity, but  
20 I'm looking through the literal wording that has been  
21 proposed, and the wording proposed is that Dondero is  
22 temporarily enjoined and restrained for communicating, whether  
23 orally, in writing, or otherwise, directly or indirectly, with  
24 any board member, unless Mr. Dondero's counsel and counsel for  
25 the Debtor are included in such communications. Not ambiguous

1 at all to me, and not unreasonable. Okay? Time to have  
2 counsel involved in these conversations because, you know, we  
3 can't have businesspeople-to-businesspeople sending texts that  
4 look like threats to me.

5 Second, making any express or implied threats of any  
6 nature against the Debtor or any of its directors, officers,  
7 employees, professionals, or agents. I don't think that's too  
8 much to ask. Please don't let him make threats to us anymore.

9 C, communicating with any of the Debtor's employees,  
10 except as it specifically relates to shared services currently  
11 provided to affiliates owned or controlled by Mr. Dondero.  
12 That seems reasonable to me because of the evidence in front  
13 of me.

14 Then D, interfering with or otherwise impeding, directly  
15 or indirectly, the Debtor's business, including but not  
16 limited to the Debtor's decisions concerning its operations,  
17 management, treatment of claims, disposition of assets owned  
18 or controlled by the Debtor, and pursuit of the plan or any  
19 alternative to the plan.

20 Now, I guess maybe you're confused or feel like that is  
21 ambiguous. I will just say, for the sake of any doubt, and I  
22 think I heard Mr. Morris saying precisely this, that, you  
23 know, Dondero can file pleadings. Okay? He can file  
24 pleadings asking for relief. He can object to the plan. He  
25 can vote against the plan. And they are completely still open

1 to hearing about -- and I think they would have a fiduciary  
2 duty -- to hear about a pot plan that might be more favorable  
3 than what's on the table right now. But Mr. Morris, have I  
4 put words into your mouth? Isn't that exactly what you were  
5 saying?

6 MR. MORRIS: That is exactly right, Your Honor. And  
7 if you look, I think there's a footnote there that expressly  
8 provides -- gives Mr. Dondero the right --

9 THE COURT: Okay.

10 MR. MORRIS: -- confirms his right to do exactly what  
11 you just described.

12 (Echoing.)

13 THE COURT: Okay. Thank you for that. And I should  
14 say exclusivity is still in place, right? We don't -- I mean,  
15 I'm not inviting him to file a plan right now in violation of  
16 the exclusivity provisions, but I'm just saying discussions  
17 among lawyers, I think, are not only not prohibited but  
18 encouraged here.

19 And then, last, otherwise violating Section 362 of the  
20 Bankruptcy Code. Okay, the sky is blue. That is obviously  
21 not problematic.

22 Okay. So the next paragraph, James Dondero is further  
23 temporarily enjoined and restrained from causing, encouraging,  
24 or conspiring with any entity owned or controlled by him  
25 and/or any person or entity acting on his behalf from directly

1 or indirectly engaging in any prohibited conduct.

2 You know, I don't -- I understand that indirectly, you  
3 know, there might be some concern about the ambiguity, but it  
4 looks like to me just sort of a catchall, okay, to the extent  
5 we didn't explicitly say it in the preceding paragraph, we  
6 don't want Dondero causing some employee of an affiliate he  
7 controls to do exactly what Dondero himself is prohibited from  
8 doing.

9 I don't think it's ambiguous. And if it is, if someone  
10 runs in here, he's violated Paragraph 3 of the TRO, well,  
11 obviously we would have a contested hearing where I'm not  
12 going to hold him in contempt of court unless I've got an  
13 evidentiary showing that would convince me of that.

14 So, I guess, on balance, I'm overruling the objections and  
15 I am granting the TRO.

16 And just to be clear, I'll make a record that bankruptcy  
17 courts certainly under Section 105 can issue a TRO, and courts  
18 are usually bound by the traditional factors of Rule 65 --  
19 that is, looking at has there been a showing of immediate and  
20 irreparable harm? Is there a probability of success on the  
21 merits that the Debtor will be entitled to this when we have a  
22 later more fulsome hearing on the preliminary injunction  
23 request? Would the balance of equities favor the Movant  
24 Debtor here? And would the injunction serve the public  
25 interest?

1 I find from the evidence, the declaration of Mr. Seery,  
2 and the supporting documents, that all four prongs for a TRO  
3 are met here, so I am ordering it.

4 A couple of remaining things. We'll come back on January  
5 4th to consider whether extension of this relief in a  
6 preliminary injunction is appropriate. I don't have at my  
7 fingertips the time of day where it's set on the 4th. Is it  
8 -- I think that's the Monday after the New Year's Day holiday.  
9 So I'm guessing we're set at 1:30.

10 Traci, if you're out there, can you confirm it's 1:30 on  
11 January 4th?

12 Okay. I'm not hearing a response from her. But Nate,  
13 maybe you can double-check that.

14 (Echoing.)

15 All right. Well, let's talk a minute about what is going  
16 to happen next week.

17 Mr. Bonds, I set -- okay, back on November -- please take  
18 your phone off mute when I am talking. Or put it on mute when  
19 I'm talking, please.

20 On November 19th, you filed the motion, basically -- I  
21 can't remember the wording of it -- but something like wanting  
22 to change the protocol for non-ordinary-course sales of  
23 assets. And you asked for an emergency hearing, and I denied  
24 that. And I was very concerned that it looked like an attempt  
25 to renegotiate the January protocol order that the Committee

1 had worked so hard to negotiate on. But it's set, finally. I  
2 think it's this next Thursday, a week from today.

3 But meanwhile, you know, again, I feel like the issues  
4 raised in that are very much overlapping with what we talked  
5 about today, as well as I feel like the January protocol order  
6 controls here, and it's an attempt to revisit that a month  
7 before confirmation.

8 But this newest emergency motion filed by Mr. Wright's  
9 client, it feels like, as I think I mentioned, the same type  
10 of motion dressed a little bit differently from entities  
11 controlled by Dondero rather than Dondero directly. And  
12 meanwhile, Mr. Wright has asked for a hearing next Tuesday.  
13 I'm not going to have three hearings on the same issue. So I  
14 guess I'll hear first from Mr. Dondero's counsel. I mean,  
15 what do you think I'm going to hear next Thursday that is  
16 going to change my mind about this was all covered in the  
17 January protocol order and I'm not going to revisit it a month  
18 before confirmation? Mr. Lynn, are you here to address that  
19 one?

20 MR. LYNN: Yes, Your Honor. First of all, I think  
21 the hearing is actually set for next Wednesday.

22 THE COURT: Okay.

23 MR. LYNN: Secondly, the motion filed by Mr. Wright,  
24 as I understand it, has to do with sales of assets by the CLOs  
25 that the Debtor manages as portfolio manager and not -- and

1 does not have to do with any sales of assets by the Debtor or  
2 its estate. So they're two different issues.

3 As I understand Mr. Wright's pleading, he is arguing that  
4 under the Advisers Investment Act, if I have that name right,  
5 that Mr. Seery, on behalf of the Debtor, ought not to ignore  
6 directions from or suggestions, requests, as they actually  
7 are, from investors in the CLOs with respect to the assets of  
8 the CLOs. That's entirely different from the concern that we  
9 are expressing with respect to sales of assets by the Debtor.

10 Secondly, while Mr. Dondero may have some influence on the  
11 CLOs, it is my understanding that the investors that Mr.  
12 Wright represents are governed by an independent board of  
13 directors, which Mr. Dondero may be on. I don't know whether  
14 he is or not.

15 Third, we are not trying to change the protocols. We do  
16 not believe anything in the protocols at all -- we've  
17 identified nothing in the protocols at all that says that the  
18 Debtor, and, by extension, Mr. Seery and the independent  
19 board, may take actions outside the ordinary course of  
20 business without notice and an opportunity for hearing before  
21 this Court.

22 We have asked in the alternative that if somehow the  
23 protocols authorize these actions, that the Court alter the  
24 protocols.

25 What triggered this, Your Honor, was a sale of an entity



1 known as SSP, which belonged to Trussway, which in turn  
2 belongs to the Debtor. We believe but we do not know for sure  
3 that the sale is below the price that could have been  
4 obtained. However, the sale was undertaken, as we understand,  
5 without competitive bidding, without notice -- certainly,  
6 there was no notice to Mr. Dondero -- and without an  
7 opportunity for anyone to be heard.

8 We do not think that the intention of the protocols was  
9 for this Court to abdicate its authority to oversee the  
10 Debtor's operations and to limit the authorities entitled to  
11 participate in decisions involving disposition of assets of  
12 major value, to limit the decision-makers to the independent  
13 board -- in particular, Mr. Seery -- and to limit it to the  
14 members of the Creditors' Committee, rather than providing  
15 notice generally to creditors, rather than providing a method  
16 for competitive bidding, rather than letting people know what  
17 is going on.

18 Your Honor has often stated, not just in this case, your  
19 concern that the process should be transparent. We believe  
20 that at this point the Debtor is attempting to use the  
21 protocols in an effort to avoid the transparency that  
22 creditors, equity interest owners, and most of all, this  
23 Court, are entitled to.

24 THE COURT: All right. Well, I don't know if anyone  
25 wants to respond to that, but --

1 MR. MORRIS: If I may, Your Honor.

2 THE COURT: Go ahead, Mr. Morris.

3 MR. MORRIS: Just very briefly. I think I heard  
4 Judge Lynn say that there's nothing in the protocols that  
5 authorizes the Debtor to sell assets outside the ordinary  
6 course of business. And if he made that admission, I still  
7 don't see the point of this motion next week. All they're  
8 doing is questioning the Debtor's business judgment. They  
9 don't really have a right to do that. Mr. Dondero doesn't  
10 have a right to participate in the sale of those assets. The  
11 Debtor -- you know, there's no evidence before the Court,  
12 there will be no evidence before the Court, as to how the  
13 Debtor decided, what factors they considered when deciding to  
14 sell these assets. This is just completely improper.

15 (Echoing.)

16 Mr. Dondero personally participated in the corporate  
17 governance resolution last January. There has been no  
18 complaint by him or anybody else about the protocols, about  
19 the Debtor having operated outside the protocols. The Debtor  
20 is transparent. Every single month, we file monthly operating  
21 reports. You can see what's happening with assets, right? We  
22 work with the Committee. The Committee's not here joining in  
23 this motion. The Committee hasn't complained about the  
24 process. It's just Mr. Dondero. He's simply trying to  
25 exercise -- this is just another attempt to further exercise

1 control. He can make his motion. It will be denied because  
2 the facts simply don't support it.

3 THE COURT: Mr. Clemente, is it wrong of me to assume  
4 that you and your clients are very vigilant in paying  
5 attention to trades, transfers, outside the ordinary course?  
6 I assume since, again, you have a committee of sophisticated  
7 parties who are owed hundreds of millions of dollars, and you  
8 so heavily negotiated the January protocol order, that you're  
9 following it meticulously and paying attention to what's  
10 happening. Do you care to comment?

11 MR. CLEMENTE: Thank you, Your Honor. I do. Matt  
12 Clemente, for the record, on behalf of the Committee.

13 You're exactly right, Your Honor, and Your Honor actually  
14 touched on several things that I would have said earlier.

15 First of all, the Committee is made up of very  
16 sophisticated members, which makes my job sometimes easy and  
17 sometimes challenging, because they are very hands-on and they  
18 do understand the business of Highland and we did heavily  
19 negotiate the protocols early in the case, Your Honor, and  
20 they were designed with exactly these types of transactions in  
21 mind, so that the Debtor had to come to the Committee and lay  
22 out its case for a particular transaction.

23 With respect to the transaction at issue, that's exactly  
24 what happened, Your Honor. We're not going to get into,  
25 obviously, Committee deliberations, but I can tell you that

1 the protocols have been followed.

2 As Your Honor knows, when we've had an issue under the  
3 protocols, I remember several months ago when we argued about  
4 certain distributions being made, the Committee certainly was  
5 not shy about bringing it to Your Honor's attention.

6 So we have been very vigilant and very diligent in holding  
7 the Debtor accountable under the protocols. And we believe  
8 that -- although, again, when we've had an issue, we've come  
9 to Your Honor. We believe that the protocols have worked as  
10 they were intended to and as they were designed, Your Honor.

11 So I can assure you that the Committee has been very  
12 vigilant and the Committee will continue to be very vigilant.  
13 These issues were all raised in the context of negotiating the  
14 protocols. That was before Your Honor. Mr. Dondero was  
15 involved with that. It was very difficult negotiations, Your  
16 Honor.

17 But this does seem like somebody now trying to renegotiate  
18 what it was that the parties agreed to and Your Honor approved  
19 early on in this case.

20 So, Your Honor, rest assured, the Committee has been very  
21 vigilant and will continue to be very vigilant.

22 THE COURT: All right. And I guess the last thing  
23 I'll say on that point is, while of course we always want  
24 transparency --

25 (Interruption.)

1           THE COURT: While we, of course, always want  
2 transparency and notice and opportunity to object, I mean,  
3 these are not your typical run-of-the-mill assets. They're  
4 not a parcel of real property or a building somewhere or  
5 inventory somewhere or intellectual property. I mean, these  
6 are -- you know, again, we have a unique business here. And I  
7 think that was very much recognized in the process of  
8 negotiating the protocols, that this is not the type of  
9 business where you do a 363 motion on 21 days' notice any time  
10 you feel like, oh, today's a great day to trade this or that  
11 in whatever fund.

12           Well, we will go forward on this motion, because Mr.  
13 Dondero is entitled to his day in court to make his argument,  
14 put on his evidence, and try to convince me that this is not  
15 just trying to renegotiate something Mr. Dondero agreed to 11  
16 months ago on the eve of confirmation. But I want to make  
17 sure -- oh, we're getting --

18           (Echoing.)

19           (Clerk advises Court.)

20           THE COURT: Okay. You're on mute. You're on mute,  
21 Mr. Lynn.

22           MR. LYNN: Your Honor, may I explain briefly? This  
23 is very distressing. Mr. Morris says that it is the ordinary  
24 course of this Debtor's business to sell a subsidiary. This  
25 is not the ordinary course of the Debtor's business. There is

1 nothing in the protocols that says that the independent board  
2 and just the creditors on the Creditors' Committee may make  
3 decisions concerning major sales. We will present evidence to  
4 that effect when it occurs, and we believe strongly -- and I  
5 want to state, Your Honor, I didn't participate in  
6 negotiations of those protocols. I wasn't involved. And I've  
7 looked at them. There's nothing that says that this can occur  
8 without going to a hearing. And there is nothing in the  
9 protocols that defines ordinary course of business to involve  
10 this.

11 This motion was not filed because Mr. Dondero wanted to  
12 get in the way. It was filed because I thought it was the  
13 right thing to do because I thought that this was contrary to  
14 the way bankruptcy and Chapter 11 should work. And it was  
15 reasoned by me, with Mr. Dondero's consent. And I very, very  
16 much am upset to hear things people say that he's trying to  
17 get in the way with this. He is not. He's asking for  
18 something that is very, very, very reasonable. If they have  
19 nothing to hide, and I hope they don't and don't believe they  
20 do, but if the Debtor has nothing to hide, what is wrong with  
21 notice and a chance for hearing?

22 MR. POMERANTZ: Your Honor, this is Jeff Pomerantz.  
23 If I briefly may be heard.

24 THE COURT: Go ahead.

25 MR. POMERANTZ: I actually did negotiate the

1 protocols. And I think what Mr. Lynn is conflating is the  
2 Debtor selling Debtor assets and the Debtor acting in its  
3 management capacity to sell assets of entities it manages.

4 We will also present the case law that basically an entity  
5 that is not a debtor whose assets are being sold by the Debtor  
6 acting as a manager is not within the purview of this Court.

7 So Mr. Lynn can be frustrated, could be upset with what's  
8 happening, but we dealt with these issues last year. Because  
9 as Your Honor mentioned, this Debtor is not the typical  
10 debtor. And we had long negotiations with the Committee on  
11 what is ordinary course and what is not ordinary course. And  
12 as I mentioned to you the last time we were here, Your Honor,  
13 as I mentioned to you in January when we had this approved, we  
14 were not seeking to get authority to sell assets out of the  
15 ordinary course of business or do any transactions out of the  
16 ordinary course of business.

17 Mr. Lynn thinks that what's happening is out of the  
18 ordinary course of the business. This Court has said it's  
19 not. So we are prepared to go forward with the hearing.  
20 We've also spoken to the affiliated entities about putting  
21 their hearing on for the same date, because we also agree they  
22 -- both motions raise similar issues. And I think we're close  
23 to an agreement on having both of those motions heard at the  
24 same time on the 16th.

25 Thank you, Your Honor.

1 THE COURT: All right. So it's the 16th, Wednesday.  
2 Did we look that up, Nate?

3 THE CLERK: It's at 1:30.

4 THE COURT: It's at 1:30? All right. So we will go  
5 forward with the Dondero motion Wednesday, December 16th, at  
6 1:30, and we will go ahead and set the what I consider closely  
7 overlapping motion filed by the NexPoint entities and Highland  
8 Fixed Income Fund by Mr. Wright, we'll go ahead and set that  
9 at the same time.

10 Let me say this as clearly as I can. If there's going to  
11 be a challenge to the Debtor's business judgment, Mr. Dondero,  
12 he needs to be present at the hearing on video and he needs to  
13 testify, okay? I understand what Mr. Lynn said, that this was  
14 his idea, he thought the January protocol order violated the  
15 Bankruptcy Code, blah, blah, blah, but I am going to order  
16 that Mr. Dondero be present December 16th at 1:30 and testify.  
17 Okay?

18 So I've kind of modified that. I said if the business  
19 judgment of the Debtor is being challenged, but no, I'm  
20 broadening that. I think Mr. Dondero just needs to provide  
21 testimony on Wednesday. Given everything I heard today with  
22 the TRO request, and given that, in substance, he's -- he is  
23 challenging the Debtor's business judgment and the mechanism  
24 where the Committee oversees it, he just needs to testify.  
25 All right? So please convey that to him.



1           Now, Mr. Wright, I'm first going to ask, I know you  
2 weren't -- you were just listening in today, but do you want  
3 to say anything? I see you put your jacket on now. Thank  
4 you.

5           MR. WRIGHT: I did. I did find a jacket. I'm sorry,  
6 Your Honor.

7           THE COURT: Okay. Go ahead.

8           MR. WRIGHT: (muffled) So I, you know, I can address  
9 why we're asking for limited relief. I can also address the  
10 underlying motion, which (inaudible) some of -- in the  
11 underlying motion --

12          THE COURT: Okay. Your sound is very difficult to  
13 hear. Could you repeat what you just said? I didn't get it.

14          MR. WRIGHT: Yes, Your Honor. I'm happy to address  
15 our motion for an emergency hearing. I'm also happy to  
16 address the underlying motion we're asking be heard on an  
17 emergency basis. I didn't know, do you want me to address  
18 both or just the motion for why we're asking for emergency  
19 relief?

20          THE COURT: Well, I've gone ahead and said I will set  
21 it next Wednesday. It sounds like the Debtor saw the  
22 efficiencies maybe in having this one heard at the same time  
23 as the Dondero motion.

24          I have a couple of things I want to say for the benefit of  
25 you and your client, but I was giving you the chance to say

1 something first.

2 Here's what I'm thinking, going into this, so you can be  
3 prepared to address this next Wednesday. Your motion feels to  
4 me exactly like what we litigated *ad nauseam* in the Acis case.  
5 Now, if any of the Acis lawyers are on the line or Mr. Terry  
6 is on the line, I wonder if they are chuckling. And what I  
7 mean is -- I heard a chuckle. I don't know if that was Ms.  
8 Patel. We had hearings --

9 MS. PATEL: It was, Your Honor.

10 THE COURT: Okay. We had hearings in the Acis case.  
11 Remember, Acis was a portfolio manager for CLOs. And the  
12 party that was in the bottom tranche of the CLOs, okay, the  
13 equivalent, I think, to your clients here, the NexPoint  
14 entities and Highland Fixed Income Fund, we sometimes called  
15 them the subordinated debtholders or the equity-holders, that  
16 party -- it was a party named HCLOF -- began during the *Acis*  
17 case trying to do a call, trying -- redemption notice. Acis,  
18 liquidate these CLOs. We are -- we're done. We're tired.  
19 You know, we're outside the reinvestment period. We want you  
20 to liquidate. And started to kind of force that issue.  
21 Highland was the sub-manager of Acis at that time. So, guess  
22 what, the Chapter 11 trustee filed an adversary proceeding  
23 asking for TROs, saying, you know, this is the portfolio  
24 manager's discretion. And not only that, what they're doing  
25 isn't a reflection of reasonable business judgment because,

1 you know, we don't think it's the right time actually to  
2 liquidate these CLOs, they're just trying to deprive the  
3 portfolio manager of his stream of revenue for managing this.

4       So we had multiple hearings about this. I issued a TRO  
5 saying stop it, bottom tranche of the CLOs. It seems  
6 transparent you're just trying to deprive Acis, the portfolio  
7 manager, of value. And you know, irony, irony, it's like the  
8 backwards situation here. They were saying, but we're so late  
9 in the life of these CLOs, it makes sense to liquidate them.  
10 Why would you want to keep these things going? We're not  
11 violating the stay. We're not jacking with the estate value  
12 and trying to deprive Acis of its revenue stream. Anybody  
13 knows it makes sense to liquidate these late-in-life CLOs.  
14 Very ironic to me, although maybe it's not the situation,  
15 apples to apples, but here, you see what I'm saying, it feels  
16 like same situation, only flip-flopped. The portfolio manager  
17 here, Highland, is going to be engaged in liquidating the  
18 CLOs, and your client, bottom tranche of equity, is saying no,  
19 don't do that. You know, there's still value there.

20       Now, I will say, in my Acis case, the equity tranche, they  
21 kind of -- their theory evolved over time. They were like,  
22 well, we actually just want CLOs managed by Highland, a  
23 Highland entity, and Acis isn't a Highland entity.

24       So, bottom line, I issued a TRO. Stop it, equity tranche.  
25 This is not your call, it's the portfolio manager, and I think

1 you're just jacking with the portfolio manager to screw up the  
2 reorganization. And guess what, we even had then a  
3 preliminary injunction and then a plan injunction. And of  
4 course, there were bells and whistles on what would evaporate  
5 the injunction. But that's now on appeal to the Fifth  
6 Circuit.

7       So, you know, at my confirmation hearing at least in Acis,  
8 if not previous hearings, we even had expert witnesses and we  
9 pored through the language of the portfolio management  
10 agreements. And I don't know if here we have the same  
11 situation, but it was complicated in Acis because we had the  
12 portfolio management agreements between the CLO manager and  
13 the CLO issuers, but then there was a separate management  
14 agreement between the equity tranche and, I don't know, I  
15 can't remember who the counterparty to that one was. But  
16 there, there were multiple agreements, and you had to parse  
17 through it, and we had experts testifying about, you know,  
18 discretion of the equity-holder versus not, or portfolio  
19 manager, da, da, da, da, da. And I ruled as I ruled. I  
20 granted the injunction, to the detriment of the equity  
21 tranche. And maybe the Fifth Circuit one day will tell me I  
22 was wrong. You know, I really think it's a hard, hard, hard  
23 issue.

24       But I'm just telling you, that's how I ruled on, I think,  
25 three occasions.

1           Maybe the portfolio management agreements are worded  
2 differently here. You know, maybe -- maybe it's a different  
3 issue. But I will say I read your motion yesterday with  
4 frustration. I'm like, haven't I ruled on this like three  
5 times in the Acis case? And then, you know, maybe I haven't.  
6 Again, maybe, maybe the portfolio management agreements in  
7 this case would convince me differently. But were you aware  
8 of how I ruled in Acis?

9           MR. WRIGHT: Your Honor, I'm aware of the Acis case,  
10 but no, I wasn't aware that this particular issue was  
11 addressed in such depth.

12           THE COURT: Okay.

13           MR. WRIGHT: (muffled) I will, of course, go take a  
14 look at all those hearings. I anticipate that I'm going to  
15 try to draw some distinctions between my situation and the  
16 situations there, but I certainly will be prepared to address  
17 that next week.

18           I think the thing that I would say just very broadly is  
19 that we are not -- I think our request is very limited in what  
20 we're asking for. All we are asking for is that there is a  
21 temporary pause on the Debtor exercising its right as  
22 portfolio manager to direct sales that we don't agree with for  
23 a ten-day period. And we would then use that period of time  
24 to explore, either consensually or through rights that we  
25 (inaudible). And then in the process of looking at this, Your

1 Honor, under the documents effecting a transfer of portfolio  
2 management, you know, these documents, they're based on the  
3 rights of the preference holders.

4 You know, my client's concern is really about the, you  
5 know, the investment time window of claim today versus the  
6 funds, the relevant -- again, Mr. Macur (phonetic) -- my  
7 clients include two advisors that are, you know, that are  
8 ultimately I think controlled by a vehicle that Mr. Dondero  
9 controls, but also I have a few clients that are funds that  
10 are required by SEC rules, as I understand it, to have a  
11 majority independent board. So I dispute that they're a  
12 Dondero-controlled entity, but I understand that that's  
13 testimony (inaudible). But I -- that's -- that's not right.

14 And so the funds, --

15 THE COURT: Who are the board members?

16 MR. WRIGHT: I can have that for you next week, Your  
17 Honor.

18 THE COURT: Okay.

19 MR. WRIGHT: I don't have it in front of me. But  
20 they're required by SEC rules to have a majority independent  
21 board. And so we -- the funds that are an advisor of my  
22 clients, they have a much longer-term investment horizon. So,  
23 you know, in my mind, I probably overly-simplistically  
24 analogize it to the difference between saving money for a  
25 house you intend to buy in a year and how you might invest

1 that versus saving money for retirement that you might do in  
2 20 years. And I think any investment advisor will tell you  
3 you're going to -- you're going to do that differently,  
4 because with a long horizon you can accept (inaudible) and  
5 bucket changes and stuff like that. When they go out a long  
6 time, you know, it'll be okay. And on a short horizon, you  
7 know, you need to sort of make sure you're holding onto what  
8 you have and just approach it differently.

9 Highland, under its plan, is intending to liquidate at the  
10 end of 2022, which that's -- that's fine. That's what they're  
11 intending to do. But that's a very different investment time  
12 horizon than my clients, and so we -- you know, and they're --  
13 they're proceeding to run, you know, their liquidations that  
14 way. I don't think that there's anything wrong with that.  
15 You know, that's their discretion. But we think that we'd be  
16 better served with a portfolio manager that is taking a long-  
17 term time horizon, which once was Highland but now not, given  
18 the bankruptcy case. And so, you know, we'd like to ask that  
19 -- and we're just -- we're really not -- we're not asking for  
20 a TRO. I think Mr. Morris (inaudible) a TRO. I understand  
21 that's their position. But I dispute it.

22 Highland is in bankruptcy, and so it's subject to the, you  
23 know, it's subject to the bankruptcy system and subject to the  
24 control of the Court. What we are asking would be for the  
25 Court to use its power under 363 and 1107 and 105 to tell

1 Highland rough -- for 30 -- within 30 days to figure out if  
2 they can replace you under the documents or if there can be a  
3 deal, as Mr. -- Mr. Bain mentions, there will be discussion of  
4 a (inaudible) to reach a consensual resolution in which the  
5 portfolio manager would change that would have to involve the  
6 CLOs and probably my clients and also the Debtor, probably, to  
7 see if we can get there. And, you know, if we can't, we  
8 can't. That's really the limited nature of what we're asking  
9 for now. It may be different than what you were describing in  
10 the Acis case. But again, I will go and read those cases and  
11 I will be prepared to address that more fully next week.

12 MR. POMERANTZ: I mean, Your Honor, this is Jeff  
13 Pomerantz, if I may briefly respond.

14 THE COURT: Go ahead.

15 MR. POMERANTZ: I think there's a fundamental problem  
16 with the argument that Mr. Wright just made. First of all,  
17 there are other investors and other people with interests in  
18 those CLOs. It's not Mr. Wright's clients only.

19 And also, the premise that the decisions that are being  
20 made in terms of liquidating those assets have to do with the  
21 Debtor's timeline on liquidation, just, you'll hear from Mr.  
22 Seery next week, is fundamentally incorrect. Mr. Seery is  
23 making decisions on behalf of Highland that he believes are  
24 within his fiduciary duty to the funds to maximize value.

25 So the whole premise of the argument that this is between



1 a long-term horizon and a short-term horizon is just  
2 incorrect. And there are other people that Mr. Seery has to  
3 worry about. He has a duty to the CLO, and just because one  
4 set of investors wanted to do certain things, they don't have  
5 that right. It's -- it's -- it wasn't lost on us that, in Mr.  
6 Wright's motion, he did not point to any language in any  
7 agreements that in any way give him that right.

8       So while we appreciate that these CLOs have to be  
9 addressed, and we have engaged in discussions with Mr.  
10 Wright's client and Mr. Bain's client to try to have a soft  
11 landing, they have not occurred yet. And in the interim, the  
12 Debtor has to do what it is obligated to do and act in a  
13 fiduciary manner and act consistent with the agreements.  
14 That's why we objected and we will be objecting to any  
15 moratorium on any of those efforts.

16       THE COURT: Okay. All right. So, Mr. Wright, I am  
17 also going to direct that you have a client witness to testify  
18 about these things. And I do want to understand, you know,  
19 who you're taking instructions from and who is on the board on  
20 these entities.

21       You know, we had a hearing before I think you were  
22 involved where the Committee was seeking discovery of  
23 documents, and a lot of the what I'm going to call Highland  
24 affiliates -- and I know people sometimes cringe when I use  
25 that word affiliates; you know, it may or may not meet the

1 Bankruptcy Code 101 definition of affiliate. But entities in  
2 the Highland umbrella, many of them resisted production of  
3 documents from the Committee. And I got concerned at that  
4 point in time of who is instructing the lawyers, because I  
5 felt like, in many instances -- not all, but in several  
6 instances -- you know, I was concerned it's in the estate's  
7 best interest to get these documents. You know, the Committee  
8 was the one seeking the documents, but we've got entities in  
9 the Highland umbrella resisting. And so it felt like there  
10 was a conflict. And if the same human beings were employees  
11 of the Debtor, and --

12       Anyway, I think we got through a lot of that, but I  
13 remember, in connection with all of that, looking at the list  
14 of Highland entities who filed proofs of claim in the  
15 bankruptcy case. And I remember asking, in some cases, like,  
16 who filed the proof of claim, and I was told that Mr.  
17 Dondero's counsel prepared a lot of these proofs of claim of  
18 the different entities. And at least signatories, I saw that  
19 Frank Waterhouse has signed the proofs of claim at least for  
20 NexPoint Advisors, NexPoint Capital, Inc., NexPoint Strategic  
21 Opportunities Fund.

22       Anyway, we had a discussion about my concerns about  
23 conflicts back around that time, but here's what I'm getting  
24 at. I'm worried all over again about do we have any human  
25 beings involved calling the shots for your client, Mr. Wright,

1 that have fiduciary duties to the Debtor, and maybe this is  
2 getting in conflict with that. I just don't know. I just  
3 don't know. But it's concerning to the Court. So, what would  
4 help is if we have a human being testify for your clients so  
5 we can clear the air on that one. Okay?

6 So, next Wednesday, December 16th, at 1:30, we'll have a  
7 hearing on the Dondero motion and on these NexPoint motions of  
8 your client, Mr. Wright. And we're going to have a witness  
9 for Mr. Wright's client and we're going to have a witness --  
10 and we're going to have Dondero being a witness. And Mr.  
11 Morris is going to upload your TRO, and we're going to have a  
12 follow-up hearing on January 4th on the preliminary injunction  
13 request.

14 All right. So, anything else?

15 MR. MORRIS: Yes, Your Honor. It's John Morris for  
16 the Debtor. I've got Mr. Seery on the phone, the Debtor's CEO  
17 --

18 THE COURT: Okay.

19 MR. MORRIS: -- and CRO. And if it pleases the  
20 Court, he would just like to spend a moment giving the Court  
21 an update as to where he is in the process.

22 THE COURT: Thank you. He may.

23 MR. MORRIS: Is that okay?

24 THE COURT: Uh-huh.

25 MR. MORRIS: Okay.

1 MR. SEERY: Thank you, Your Honor. Can you hear me?

2 THE COURT: Yes.

3 MR. SEERY: I appreciate the Court's time. I think  
4 with the overlapping motions it would be useful just to tick  
5 through very quickly, not to take too much of your time, where  
6 we are and why some of these things have come before you in  
7 the last couple days.

8 First, as you're aware, we have a plan out for a vote. We  
9 believe we're going to get confirmed. We believe we'll get  
10 the votes. We're still waiting on the votes. And we're still  
11 working on claims. So, as we speak, including even this  
12 morning, trying to resolve certain of the other open claims.

13 The Debtor is still managing its assets. And what that  
14 means is we're addressing financing with underlying assets  
15 that are in portfolio companies. We are addressing our own  
16 debtor-owned assets, some of which we are selling in the  
17 ordinary course. So, for example, securities. Where we have  
18 securities in an account, we have been selling those where we  
19 think the market opportunity was ripe.

20 Up until mid-March, Mr. Dondero controlled those accounts.  
21 He was the portfolio manager. We took them away after they  
22 lost considerable amounts of money, about ninety million  
23 bucks. Real money. So we took over control of those accounts  
24 since then, and we've been managing to sell them down to  
25 create cash where we think the market opportunity is correct.

1 With respect to subsidiaries, we don't have any plans to  
2 sell any PV assets now. These are companies that are part-  
3 owned, either directly or indirectly, through subsidiaries,  
4 with a number of other (inaudible) who are interest holders.

5 SSP, for example, there's been a lot of noise this  
6 morning, no real facts. I will tell you that we did sell SSP.  
7 We did it in conjunction, as Mr. Clemente indicated, with the  
8 Committee. We looked at number of bids. That entity was a  
9 private-equity-owned asset. We believe that it was sold  
10 appropriately. It wasn't selling an asset of the estate. It  
11 was actually a thrice-removed asset, also with other interest  
12 holders, including mostly completely independent, including  
13 SIBC -- SBIC owners who wanted to choose off that asset as  
14 well. We believe we got a very good price and executed that  
15 well. Happy to litigate and defend that at any time.

16 The CLOs, we're the manager of the CLOs. What we're  
17 trying to do in our plan is assign CLOs back to NexPoint  
18 Advisors. The reason for that is, while they do generate  
19 income, we didn't believe that the income was enough to  
20 justify us maintaining them. They would not be assets that we  
21 would continue to hold through the case. Or through the  
22 liquidation. Unclear whether NexPoint wants those assets now  
23 back or not. We have been working, as Mr. Bain indicated,  
24 closely with the Issuers and the Issuers' counsel, because  
25 there's very particular, specific ways to deal with those

1 assets under the documents that protect the various investors.  
2 As Mr. Morris pointed out, entities related, controlled by,  
3 managed by Mr. Dondero are not the only investors in these  
4 CLOs. Our duty is to the CLOs. We believe that we are  
5 adhering to that duty. We are happy to at some day litigate  
6 that.

7 With respect to asset sales, the Debtor has a team that  
8 manages these assets. The team came to me to sell certain  
9 assets. Mr. Dondero, NexPoint Advisors, they don't monitor  
10 these assets. They don't know anything about them. The  
11 assets we're talking about are loans, though the Debtor hasn't  
12 sold any of those, or securities that trade, equity securities  
13 that trade in the liquid markets. These are securities, you  
14 can go on the screen, you can go on Yahoo Finance and see how  
15 they trade.

16 Our team came to us and suggested that we sell some. I  
17 sat down with the analyst and the analyst suggested we sell.  
18 The manager of the day-to-day operations of CLOs suggested we  
19 sell. We set the sell notice within the context of the  
20 market. This wasn't a dumping. We thought that the market  
21 would support what we were doing, and it did.

22 Another asset that we were going to sell is an asset we  
23 don't have an analyst on. Haven't had one for years,  
24 apparently. It's not very much money. Mr. Dondero's related  
25 entities don't hold very much of the interests in the CLOs

1 that have that. They have debt which is owned by third  
2 parties. It's a good trade, in our opinion. Our analysis was  
3 it made sense to sell it within the context of the market.  
4 The Equity has no decision as to whether we do that. We're  
5 the manager.

6 Mr. Wright's example and his offer is, frankly, silly. If  
7 those public funds want to indemnify the Debtor and CLOs for  
8 any potential losses, that would be great, we can do that, we  
9 can talk about that, how to arrange that.

10 As to the pot plan, nobody has worked harder on the pot  
11 plan -- and I include Mr. Dondero -- than I have. Nobody. I  
12 didn't do it because I was trying to help Mr. Dondero. I  
13 thought it would be in the best interest of the estate, which  
14 means the creditors, the employees, and the investors whose  
15 funds we manage, to try to get a consensual deal done. So  
16 far, we've been unable to do that. In my declaration, there's  
17 a footnote. Not only did I help work on the idea, I actually  
18 drafted the term sheet. (inaudible) to do it, I presented it  
19 to the Creditors' Committee. Not that I wanted to do it. I  
20 thought they should do it. I did it. No one has worked  
21 harder for that.

22 The employees, unbelievably frustrated to hear that. Mr.  
23 Dondero put this company into bankruptcy. Our management of  
24 this estate has required that we fight with a lot of folks  
25 about keeping the team together. Again, we did it, not so

1 much for the individual team members, but we thought that  
2 would be the best way to enhance value for the estate and it  
3 would encourage an alternative plan that could be value-  
4 maximizing.

5       The employees have deferred compensation. That was all  
6 set up by Mr. Dondero. The money that was taken out and used  
7 in this -- by this company for other things rather than paying  
8 employees cash on a regular basis was used by Mr. Dondero well  
9 before I ever came into this case. If there are repercussions  
10 to employees because we are liquidating this entity or  
11 monetizing these assets, and because we have to do it through  
12 this vehicle, Mr. Dondero can stay in the mirror and not  
13 abort. It's very insulting and frustrating to hear that from  
14 counsel, who doesn't understand a thing about what we've done  
15 to try to keep the business together.

16       The CLO part of the business, we'd like to assign. We  
17 would like to assign as many of the employees over to help  
18 manage the business and have those go to Mr. Dondero's  
19 entities. And that's fine with us. You know, that is a  
20 concrete benefit to him, because it's also beneficial to the  
21 estate. We're not in the anger business. We are independent.  
22 The only thing that makes us angry is that when somebody just  
23 makes up noise, not facts, just statements that have no basis  
24 in reality of what's happened in this case, when we're trying  
25 to hold it together and come to a conclusion.



1           Sorry if I sound frustrated, Your Honor, because I really  
2 am, and I thought you should see that going forward before we  
3 go into next week. If the NexPoint entities want the CLOs,  
4 let's just work on that transfer. We have Mr. Bain and his  
5 clients. They are very good. They are CLO specialists. His  
6 co-counsel at Schulte is renowned in this space. We will work  
7 through it and make sure it works for the Issuers, make sure  
8 it works for NexPoint, and of course make sure it works for  
9 the estate.

10           Thank you, Your Honor.

11           THE COURT: All right. Mr. Seery, I really  
12 appreciate these comments. They've been very helpful to my  
13 thinking. In fact, I want to make sure it's under oath in  
14 case I ever want to take judicial notice of anything you've  
15 said just now. Do you solemnly swear or affirm that the  
16 statements you made were true and correct today, so help you  
17 God?

18           MR. SEERY: I do, Your Honor.

19           THE COURT: All right.

20           MR. SEERY: And just to be clear, if I ever make a  
21 statement to the Court, I consider it under oath.

22           THE COURT: Okay. Thank you. I appreciate that.

23           All right. So, again, I feel like that was so very  
24 helpful. And, you know, this is a precise example of why I am  
25 directing, if Mr. Dondero is going to urge a position with the

1 Court next Wednesday, he needs to testify. And if NexPoint,  
2 through whoever their decision-maker is, is wanting to urge a  
3 position to the Court, they need a human being to testify.  
4 And I'll hear Seery and I'll hear Dondero and I'll hear  
5 whoever that person is, and that's what's going to matter, you  
6 know, most to me. Yeah, we have some legal issues, certainly,  
7 but I like to hear business people explain things, no offense  
8 to the lawyers. But it's always very helpful to hear the  
9 business people in addition to the lawyers. All right. So,  
10 Mr. Morris, you're going to upload that TRO for me.

11 MR. MORRIS: Yes, Your Honor.

12 THE COURT: Mr. Wright, you can upload your order  
13 setting your motion for hearing next Wednesday at 1:30. And I  
14 think we have our game plan for now. Anything else? All  
15 right. We're adjourned.

16 THE CLERK: All rise.

17 (Proceedings concluded at 11:33 a.m.)

18 --oOo--

19

20 CERTIFICATE

21 I certify that the foregoing is a correct transcript to  
22 the best of my ability from the electronic sound recording of  
the proceedings in the above-entitled matter.

23 **/s/ Kathy Rehling**

**12/11/2020**

24

\_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

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Date

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